



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE

### Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for unpaid rent and to obtain an order to suspend or set conditions on the landlord's right to enter the rental unit.

Both parties attended the hearing by conference call and gave testimony. The tenant confirmed receiving the notice of hearing package and the landlord's submitted documentary evidence. The tenant did not submit any documentary evidence. The landlord confirmed receiving the notice of hearing package. As both parties have attended and have confirmed receipt of the tenant's notice of hearing package and the landlord's submitted documentary evidence, I am satisfied that both parties have been properly served.

During the hearing the landlord made an oral request to end the tenancy and to seek an order of possession. As such, I find that the landlord has satisfied the requirements of Section 55 of the Act which states,

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As such, I find that the landlord has satisfied the Act by making an oral request to end the tenancy and to obtain an order of possession.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

This tenancy began on September 1, 2013 on a 2 year fixed term tenancy ending on September 1, 2015. The monthly rent is \$1,550.00 payable on the 1<sup>st</sup> of each month as shown by the submitted copy of the signed tenancy agreement dated August 18, 2013.

The tenant confirmed receiving a 10 day notice to end tenancy issued for unpaid rent dated December 16, 2014 displaying an effective end of tenancy date of December 27, 2014. The notice stated that the tenant failed to pay rent of \$1,550.00 that was due on December 1, 2014.

Both parties confirmed that the landlord waited to process the December 1, 2014 rent cheque as per the tenant's request. The landlord received a notice from the bank that the rent cheque was returned as NSF dated December 12, 2014.

Although the tenant failed to provide any details in his application for dispute resolution, the tenant did provide details in his direct testimony during the hearing.

The tenant states that because of work accounting problems that both parties agreed that the tenant may send a new rent cheque as per the landlord's submitted copy of a text message dated December 16, 2014. The tenant state that a replacement cheque was sent via Registered Mail with the notice of hearing package after he was informed by the landlord that the December 1, 2014 rent cheque was returned NSF via text message on December 16, 2014. The landlord disputes this stating that no cheques or rent payments have been received since the 10 day notice to end tenancy dated December 17, 2014. The tenant states that he is unable to provide any evidence to support his claim that he sent a replacement cheque or any post dated cheques for upcoming rent.

The tenant also seeks an order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant states that the landlord and his agent have entered the rental on at least 3 occasions without proper notice. The landlord disputes this stating that a copy of 1 notice has been submitted showing his request for a 24 hour notice. The notice states, "January 7, 2014, This is a 24hr notice that I will be entering the premises at #1211 168 W. 1<sup>st</sup>. Time: 10:10am", signed by the landlord, J. D.

### Analysis

I find based upon the direct testimony of both parties and the landlord's submitted documentary evidence that the tenant has failed to establish reasons to cancel a notice to end tenancy issued for unpaid rent. Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated December 17, 2014 by posting it to the rental unit door.

The tenant admitted in his direct testimony that the initial rent cheque dated December 1, 2014 was returned NSF because of employment accounting problems, but was not able to provide any evidence to support his claim that a new cheque was sent to the landlord via the Registered Mail Package with the notice of hearing package. The tenant confirmed in his direct testimony that the new cheque was not sent until he filed his application for dispute resolution dated December 18, 2014. The tenant commented on more than one occasion during the hearing that he wished to now pay the outstanding rent via a money order, but has not done so. The landlord indicated that he wished to now end the tenancy. The tenant's application to cancel the notice to end tenancy is dismissed for insufficient evidence that rent was paid within the allowed timeframe. The notice dated December 17, 2014 is upheld. The landlord is granted an order of possession. The order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Section 29 of the Residential Tenancy Act speaks to the landlord's right to enter the rental and states,

#### **Landlord's right to enter rental unit restricted**

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Although the tenancy is at an end and no order may be issued as such, I note for the record that the landlord has failed to comply with the Act in providing proper notice of entry of the rental. The landlord has failed to provide a purpose and time for the notice of entry as per the Act.

Conclusion

The tenant's application is denied.  
The landlord is granted an order of possession.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 15, 2015

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Residential Tenancy Branch

