



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, CNC, MT

For the landlord: OPR, MNR, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) and a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) and for an order granting more time to make an application to cancel a notice to end tenancy. I have not considered this request as the tenants’ application was filed within the required time allowed under the Act.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The listed tenant and the landlords attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notices?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order comprised of unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted shows that this tenancy began on June 1, 2014, monthly rent is \$1100, due on the 1<sup>st</sup> day of the month, and the tenants paid a security deposit of \$500.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain or support the notices to end the tenancy.

**Landlord's application-**

*10 Day Notice-*

The landlord submitted that he served tenant TB with a 10 Day Notice on January 3, 2015, listing an effective move out date of January 18, 2015, and unpaid rent of \$1100 owed as of January 1, 2015.

The landlord submitted that on January 3, 2015, he was offered \$900 by the tenants and that he refused the rent because it was not the full amount. As a result, the landlord issued the Notice on that day, which he had in hand in the event the tenants did not pay the monthly rent.

In response, the tenant submitted that she had \$900 to pay the landlord on January 3 when he came around to collect the monthly rent, and did not have the full amount due to the a bank error with the holidays. The tenant submitted that the landlord refused the payment of \$900, even though she informed him she would have the balance of \$200 the next day. The tenant stated she called the landlord 3 times in January to inform him she had the full rent payment, but that he refused to collect the amount.

The tenant submitted further that the parties agreed the landlord would collect the rent and that he wanted payment in cash.

YP, who is listed a landlord on the tenancy agreement, responded that she called the male tenant on January 8<sup>th</sup>, and was informed that they did not have all the rent payment. YP denied that the landlord wanted payment in cash, but they collect the rental unit as a matter of courtesy, as the tenants do not have a bank account or car.

The tenant then stated that she has never had any dealings with YP and that they take buses for transportation.

#### *1 Month Notice-*

The 1 Month Notice issued by the landlord was dated December 30, 2014, and alleged that the tenants had breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord submitted he observed that the tenants had a dog and cat, which was violation of a material term of their tenancy agreement. The landlord submitted further that he sent a letter to the tenants on October 15, 2014, warning them to get rid of the dog and cat, and despite that, when he went to the rental unit on December 18<sup>th</sup>, he heard a dog barking.

In response, the tenant submitted that they do not own a cat or dog, that she has a friend who visits 1-2 times a month, who has a dog, and that she had a friend stay 2 nights during the holiday, who had a small dog. The tenant submitted that she has asked the friend to stop visiting with the dog.

The tenant submitted further that she has chased a lot of stray cats away from the yard, 3-4 at a time, and that any dog excrement in the yard is from others allowing their dog to defecate there.

#### Analysis

#### **Landlord's Application:**

##### *10 Day Notice-*

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within 5 days. In this case, I find that the tenant disputed the Notice within 5 days; however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the evidence supports that the parties' arrangement by practice has been that the landlord would collect the monthly rent at the rental unit and that the tenants pay monthly rent in cash.

The undisputed evidence was that the landlord refused the payment of \$900 from the tenants on the day the Notice was issued; even if there was a rent deficiency on that date, the tenants still had 5 days from that date to pay the remainder of monthly rent, or \$200. I am not persuaded that the landlord made any further attempt to collect the rent, as the landlord stated that he called and was informed the payment was not ready and the tenant stating that she tried unsuccessfully to contact the landlord to collect the rent.

As I find the landlord refused the payment of rent, I do not find that the 10 Day Notice is enforceable. I therefore order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

While I have cancelled the Notice, the tenants are instructed that they remain obligated to pay the rent in full for January 2015, immediately. As the monthly rent for January 2015 has not paid, I grant the landlord a monetary order in the amount of \$1100, which is of no force or effect if the tenants pay the amount of their monthly rent for January 2015.

If the tenants fail to pay this amount without delay, the landlord may serve the monetary order on the tenants. The order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants. The landlord is also at liberty to serve another 10 Day Notice, in the event the January or February rent remains unpaid.

I decline to award the landlord recovery of his filing fee, due to his refusal of monthly rent.

*Tenant's application-*

I grant the tenant's application seeking cancellation of the landlord's 10 Day Notice, as I have cancelled the Notice for the reason described above.

Further, I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice.

The landlord was required to prove the cause listed on the Notice and I find that the landlord has not presented sufficient evidence to demonstrate that tenants have breached a material term of the tenancy agreement.

A material term of a tenancy agreement, according to Residential Tenancy Branch Policy Guideline 8, is a term the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

The landlord alleged that the term regarding no cats or dogs was a material term; however, in reviewing the tenancy agreement, the only reference was a handwritten notation by the printed term regarding a pet damage deposit, which stated "no cats or dogs". There was no clarity as to whether or not the tenants agreed to this term, and the handwritten term, with no initials, does not prove that the term was negotiated in entering this contract.

I further find that the landlord has not presented sufficient evidence that the tenants had either a cat or dog.

Due to the above, I find the landlord has not submitted sufficient evidence to support his 1 Month Notice. As a result, I find that the landlord's 1 Month Notice, dated December 30, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The landlord's request for an order of possession for the rental unit due to unpaid rent is dismissed, as I have cancelled the 10 Day Notice.

The landlord is granted a monetary award of \$1100, and is issued a monetary order in that amount, which is of no force or effect upon the tenant's timely payment of the January 2015 monthly rent.

The landlord's request for recovery of the filing fee is dismissed.

The tenant's application seeking cancellation of the landlord's 10 Day Notice and the 1 Month Notice is granted.

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 31, 2015

---

Residential Tenancy Branch

