



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wheeler Cheam Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession for breach of an agreement and to recover the filing fee from the tenant for the cost of the application.

The tenant and the named landlord attended the hearing, and the named landlord also represented the landlord company. The parties each gave affirmed testimony and the landlords provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for the tenant's failure to comply with an agreement?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlords.

The landlord further testified that the dryer in the rental unit caught fire, and due to the clutter in the rental unit, the landlord told the tenant it was time for her to move. Also, the tenant was having difficulty paying the amount of rent and maintaining the rental unit. The tenant agreed and wrote a notice ending the tenancy. A copy of the notice has been provided and it is signed by the tenant, dated November 28, and contains an expected date of vacancy of December 31, 2014. The date of vacancy has been changed from January 1, 2015 to December 31, 2014 with a stroke and initial, and the landlord testified that he watched the tenant complete the notice and told her that the

effective date had to be changed and other edits. The notice also requests \$100.00 discount from December's rent due to having no dryer, and, "...This is in full & final restitution in regard to the matter." The tenant didn't move, and the landlord requests an Order of Possession.

The landlord also testified that January's rent has not been paid, nor was it offered, but if the tenant had offered it, the landlord would not have accepted it because the tenant had given notice to end the tenancy at the end of December.

During the course of the landlord's testimony, he was questioned several times about the conversation and circumstances of when the tenant gave the notice, and the landlord replied that the parties have had numerous conversations wherein the landlord told the tenant that she couldn't maintain the unit, it was not affordable, and the tenant says she'll move. The tenancy has become more and more difficult for the tenant and the rental unit has become more and more dysfunctional and less kept. After the fire, the landlord told the tenant it was time for her to consider moving and her response was giving the notice to end. The landlord showed her that he had a cheque for \$100.00 but told the tenant she would not get it until she moved out.

The tenant testified that the landlord told the tenant that the dryer wouldn't be fixed until the tenant moved out. The tenant wanted \$100.00 in compensation and believed that to be fair but the landlord said that the tenant had to write out a request and give notice to end the tenancy. The landlord said he'd discuss it with the owner but it wouldn't be a problem. The landlord made changes to the notice and told the tenant to sign it, and she did because she needed the money and the landlord promised the money the following week. The landlord also told the tenant that the only way the landlords would give the money was if the tenant gave notice to end the tenancy. The tenant didn't get the money and the landlord refused to give it until the tenant moved out.

The tenant received advice since that the landlord has breached the agreement and the tenant wrote another letter about 2 weeks after the notice to end the tenancy was signed by the tenant. The letter withdraws the tenant's notice to end the tenancy and the tenant dropped it off at the landlord's office.

The landlord responded that the landlords have not received the tenant's letter withdrawing the notice.

### Analysis

During the landlord's testimony he was asked several times about the circumstances and conversation that took place between the parties when the tenant gave the notice to end the tenancy. He stated that he told the tenant she couldn't continue the tenancy because she couldn't afford it and couldn't maintain it. When asked about her response, he stated only that the tenant's response was the notice. The tenant testified that she was told the only way she could get the \$100.00 was if she signed the notice. The landlord was asked several times about that conversation and was not able or

willing to provide that testimony, however, the tenant did explain it; the landlord promised the tenant \$100.00 and the tenant needed the money. In considering the testimony of the tenant, the lack of the landlord's testimony, and the changes made by the landlord to the notice, I accept the testimony of the tenant.

In the circumstances, I am satisfied that the notice signed by the tenant was a blatant coercion by the landlord, not only in giving the notice to end the tenancy but by also agreeing to a final settlement of \$100.00 for loss of use of the dryer.

The landlord's application is hereby dismissed without leave to reapply. The notice to end the tenancy given by the tenant is cancelled and the tenancy continues.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the notice to end the tenancy given by the tenant is hereby cancelled.

The landlord's application for an Order of Possession is hereby dismissed without leave to reapply.

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 29, 2015

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Residential Tenancy Branch

