



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, CNL

### Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for landlords use and a monetary order for unpaid utilities. The tenant seeks an order to cancel the notice to end tenancy issued for landlords use.

Both parties attended the hearing by conference call and gave testimony. The tenant confirmed receiving the landlord's notice of hearing package and the submitted documentary evidence. The landlord confirmed receiving the tenant's notice of hearing package. The tenant confirmed that no documentary evidence was submitted. The landlord states that the tenant was served with the notice of hearing package on January 14, 2015 by Canada Post Registered Mail and has submitted a copy of the Customer Receipt Tracking number as confirmation.

I find pursuant to Sections 88 and 90 of the Residential Tenancy Act that both parties have been properly served with the notice of hearing packages and the submitted documentary evidence.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to a monetary order?

### Background and Evidence

This tenancy began on February 1, 2013 on a fixed term tenancy ending on January 31, 2014 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$2,000.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$1,000.00 was paid.

Both parties agreed that the landlord served the tenant with a 2 month notice to end tenancy issued for landlords use dated December 26, 2014. The notice displays an effective end of tenancy date of March 1, 2015 with one reason for cause selected.

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

The tenant states that the landlord gave a verbal promise to the tenant to allow him to stay in the rental until June with one free month. The tenant disputes the landlord's notice.

The tenant's witness, D.W. attended by conference call and stated that the tenant, told him that the landlord had agreed to extend his tenancy for 6 months.

The landlord states that the tenant is living on a month to month basis as per the signed tenancy agreement. The landlord disputes the claim by the tenant that a verbal agreement was made to extend the tenancy. The landlord states that the tenant has failed to pay utilities of \$200.00, but has not provided any details of the amount owed or any supporting evidence.

The tenant clarified that he is not disputing the notice, but that the landlord had given him a verbal agreement to extend the tenancy.

### Analysis

I accept the evidence of both parties that the landlord served the tenant with 2 month notice to end tenancy issued for landlords use dated December 26, 2014, displaying an effective end of tenancy date of March 1, 2015. As such, I find that the landlord has complied with the Act by properly serving the tenant with the notice dated December 26, 2014.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant has made a claim that a verb agreement was made by the landlord to extend the tenancy for a 6 month term. The landlord has disputed this. The tenant relies on a witness, D.W. who states that the tenant told him that the landlord made a verbal agreement to extend the tenancy. The landlord has submitted a copy of the signed tenancy agreement which indicates that the tenancy is currently on a month to month basis.

I find that as the landlord has disputed the claim of the tenant that the tenant has failed to provide sufficient evidence to satisfy me that an agreement was made to extend the tenancy by 6 months. I refer to the signed copy of the tenancy agreement which indicates that this is a month to month tenancy and that the tenant's witness has repeated evidence told to him by the tenant after the fact, making it hearsay. The witness did not have firsthand knowledge of the

verbal agreement. The tenant has failed to provide sufficient evidence to satisfy me on a balance of probabilities.

The tenant's application to cancel the notice to end tenancy is dismissed. The notice dated December 26, 2014 is upheld. The landlord is granted an order of possession for the effective end of tenancy date of March 1, 2015.

The order of possession 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.

As for the landlord's monetary application for \$200.00 in unpaid utilities, I find that the landlord has failed to provide any details to justify this claim. The signed tenancy agreement did not provide for utilities. The landlord did not have an agreement with the tenant for the payment of utilities. The landlord did not provide any invoices/receipts for utilities. This portion of the landlord's claim is dismissed.

#### Conclusion

The tenant's application is dismissed.

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 28, 2015

---

Residential Tenancy Branch

