



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, CNR, MNDC, ERP, RP, LRE, AAT, LAT, AS, FF

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- to set aside a Notice to End Tenancy for Cause;
- to set aside a Notice to End Tenancy for Unpaid Rent;
- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to make repairs;
- for an Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- for an Order allowing the Tenant or a guest of the Tenant access to the rental unit;
- for authority to change the locks to the rental unit;
- for authority to assign or sublet the rental unit; and
- to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 10, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Agent for the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

On August 19, 2015 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were placed in the Tenant's mail box on August 16, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 20, 2015 the Landlord submitted additional documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were not served to the Tenant. As these documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to remove the Agent for the Landlord as a Respondent and to name the Landlord as a Respondent in this matter.

### Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes that are contained in a single application. In these circumstances the Tenant has identified several issues of dispute in his Application for Dispute Resolution. I find that all of the issues identified are not sufficiently related to be determined during a single proceeding.

I find it appropriate to only consider issues I deem to be urgent at these proceedings, which include:

- the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- the Tenant's application to set aside a One Month Notice to End Tenancy for Cause;
- the Tenant's application for an Order requiring the Landlord to make emergency repairs; and
- the Tenant's application to recover the fee for filing this Application for Dispute Resolution.

The remaining issues in dispute are dismissed, with leave to re-apply.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, or the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, be set aside?

Is there a need to issue an Order requiring the Landlord to make emergency repairs to the rental unit?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2012 and that the Tenant signed a tenancy agreement in which he agreed to pay rent of \$1,600.00 by the first day of each month.

The Tenant stated that after the tenancy agreement began the Agent for the Landlord permitted him to pay rent late on approximately ten occasions. The Agent for the Landlord stated that he has accepted rent after it was due simply because he believed he had no other option.

The Tenant stated that after the tenancy began the Agent for the Landlord agreed that rent could be paid after the first day of each month. The Agent for the Landlord stated that he never agreed that the rent was due after the first day of each month and that he reminded the Tenant on several occasions that his rent was due by the first day of each month.

The Tenant submitted no evidence to corroborate his claim that the Landlord agreed rent was not due by the first day of each month.

The Landlord submitted emails which show that the Agent for the Landlord had to pursue the Tenant in order to collect the rent on several occasions. In an email submitted in evidence by the Landlord, dated May 04, 2015, the Agent for the Landlord clearly reminds the Tenant of his obligation to pay rent by the first day of each month.

The Agent for the Landlord stated that on July 02, 2015 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. The Tenant stated that he located this Notice in his mail box on July 02, 2015. The Landlord and the Tenant agree that the unpaid rent of \$1,600.00 was paid on July 06, 2015 or July 07, 2015.

The Landlord and the Tenant agree that on July 28, 2015 the Agent for the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which declared that the Tenant must vacate the rental unit by August 31, 2015.

The reasons cited for ending the tenancy on the One Month Notice to End Tenancy are that the Tenant is repeatedly late paying rent and the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Landlord and the Tenant agree that:

- rent was paid on time in August of 2015;
- rent for July of 2015 was paid on July 06, 2015 or July 07, 2015;
- rent for June of 2015 was paid on June 24, 2015 or June 29, 2015
- a cheque for rent for May of 2015 was tendered on May 03, 2015;
- the cheque tendered for rent for May of 2015 was returned by the Tenant's financial institution due to insufficient funds;

- a partial rent payment was made for May on May 19, 2015;
- the remaining rent for May was paid on May 22, 2015;
- rent for April of 2015 was paid on April 05, 2015 or April 06, 2015;
- rent for March of 2015 was paid on March 03, 2015, March 04, 2015, March 05, 2015 or March 06, 2015;
- a cheque for rent for January of 2015 was tendered on January 01, 2015;
- the cheque tendered for rent for January of 2015 was returned by the Tenant's financial institution due to insufficient funds; and
- the rent for January was paid on January 12, 2015 or January 13, 2015.

The Agent for the Landlord stated that rent for February of 2015 was paid on February 02, 2015 or February 03, 2015. The Tenant stated that rent for February of 2015 was paid on February 01, 2015.

The Landlord contends that the Tenant has sublet a suite in the lower part of the residential complex on five separate occasions during this tenancy. The Agent for the Landlord stated that the Landlord agreed the Tenant could sublet the rental unit providing the Tenant introduced those occupants to the Agent for the Landlord and the Agent for the Landlord subsequently agreed to the sublet.

The Tenant stated that the people occupying the rental unit are roommates and that he is not subletting a portion of the rental unit. He stated that the lower portion of the rental unit is not a separate suite as the living areas are not separated by a locking door, although there are cooking facilities and a bathroom in the lower portion of the unit.

The Agent for the Landlord stated that there is a locking door between the upper and lower parts of the residential complex.

During the hearing the Agent for the Landlord declared that he wanted legal possession of the rental unit by August 31, 2015. I interpret this to be a request for an Order of Possession.

The Tenant is seeking an Order requiring the Landlord to make emergency repairs to a skylight in the kitchen that is leaking. He stated that he informed the Agent for the Landlord of the leak in February of 2015; that the leak was repaired after being reported; that the skylight leaked again this summer; and that the "new" leak was not reported to the Landlord prior to this hearing.

The Agent for the Landlord stated that he has never been informed that the skylight leaked after it was repaired and that the further repairs will be made now that he is aware the skylight is still leaking.

### Analysis

On the basis of the tenancy agreement submitted in evidence and the undisputed

testimony, I find that the Tenant agreed to pay \$1,600.00 in rent by the first day of each month.

I find that the Tenant has submitted no evidence to corroborate his testimony that the Agent for the Landlord agreed that the rent could be paid after the first day of each month or that refutes the Agent for the Landlord's testimony that he did not agree rent was due after the first day of each month.

I find that the emails submitted in evidence establish that the Agent for the Landlord repeatedly pursued the Tenant to collect the rent that was due. Although the Landlord accepted rent after the due date, I find this to be a common business practise and should not be construed as consent to pay the rent late.

I find that the email dated May 05, 2015 reminded the Tenant of his obligation to pay rent when it was due. In the absence of evidence that clearly established the parties agreed to amend the due date of the rent, I find that the Tenant remained obligated to pay rent by the first day of each month.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent. On the basis of the undisputed evidence, I find that the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on July 02, 2015.

Section 46(4) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent has no effect if rent is paid within five days of receiving the Notice. On the basis of the undisputed evidence I find that the outstanding rent was paid within five days of receiving the Notice and that the Notice therefore has no effect. As the Ten Day Notice to End Tenancy for Unpaid Rent has no effect, I find that it is not necessary to consider the Tenant's application to set aside this Notice.

Section 47(1)(b) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent. Residential Tenancy Branch Guideline #38 suggests that three late rent payments are the minimum number sufficient to justify ending the tenancy in accordance with this section. I concur with that guideline.

On the basis of the undisputed evidence, I find that the rent was not paid on time in March, April, May, June, or July of 2015.

On the basis of the undisputed evidence, I find that a cheque was tendered for rent for January of 2015 when it was due on January 01, 2015; however that cheque was not honoured by the Tenant's financial institution. I therefore find that rent was not paid for January until January 12, 2015 or January 13, 2015.

Given the number of times rent was not paid on time, I find that the Landlord has grounds to end this tenancy in accordance with section 47(1)(b) of the *Act*. As the Landlord has grounds to end the tenancy in accordance with section 47(1)(b) of the *Act*,

I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy.

As the Landlord has established grounds to end the tenancy in accordance with section 47(1)(b) of the *Act*, I find there is no need to determine whether he also has grounds to end the tenancy because the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

On the basis of the undisputed testimony I find that the Landlord repaired the skylight that was leaking shortly after the problem was reported. On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Landlord intends to make further repairs to the skylight now that the Landlord is aware that the problem persists. As there is no evidence that the Landlord has not repaired the skylight when a leak was reported and that the Landlord does not intend to repair the newly reported leak, I find there is no need to issue an Order requiring the Landlord to repair the leak.

I find that the Tenant has failed to establish the merit of the Application for Dispute Resolution and I therefore dismiss the claim to recover the fee paid to file this Application for Dispute Resolution.

### Conclusion

As I have dismissed the Tenant's application to set aside the One Month Notice to End Tenancy for Cause, I grant the Landlord an Order of Possession, as requested at the hearing, pursuant to section 55(1) of the *Act*. The Order of Possession will be effective two days after it is served upon the Tenant. The Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: August 28, 2015

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Residential Tenancy Branch

