



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

### **DECISION**

#### **Dispute Codes:**

tenant CNR, CNL, MNR, MNDC, RP, RR  
landlord OPL

#### **Introduction**

This hearing was convened in response to an application by the tenant **and** an application by the landlord.

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on November 04, 2015 and subsequently amended December 07, 2015 for Orders as follows:

1. To cancel a 10 Day Notice to End for Unpaid Rent dated December 02, 2015 - Section 46
2. To cancel a 2 month Notice to End for Landlord's Use dated October 22, 2015 with an effective date of December 31, 2015.
3. A Monetary Order for compensation for loss of use - Section 67
4. Allow the tenant to reduce rent for repairs, services, or facilities agreed upon – Section 65

The landlord filed pursuant to the Act on November 27, 2015 for Orders as follows:

1. An Order of Possession for Landlord's Use of Property - Section 55

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The parties agreed to the exchange of evidence. The tenant advised they are still residing in the rental unit and do not want to vacate under

the landlord's provisions, but may determine to do so on their terms. The landlord orally requested an Order of Possession. The parties were given opportunity to turn minds to compromise and arrive at settlement to their dispute satisfactory to the needs of both parties; however this process was not successful.

### **Issue(s) to be Decided**

Should the Notice to End Tenancy for Unpaid Rent be cancelled?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the monetary amount claimed?

Is the tenant entitled to a reduction in the rent payable?

### **Background and Evidence**

The testimony of the landlord and the tenant is that this tenancy has been the subject of ongoing acrimony and remains in dispute. The relevant evidence in this matter is as follows. The rental unit is a basement accommodation in a house. The tenancy is the subject of a written tenancy agreement provided by the parties between the landlord and tenant, and signed by them on August 24, 2015. It contains the standard terms of a tenancy agreement as well as what is included in the rent: hot water, electricity, gas heat, basic TV cable, basic Internet. Rent in the amount of \$600.00 was originally agreed payable by the tenant in advance on the first day of each month – later adjusted by the parties by mutual agreement to \$580.00 – however the parties did not agree as to the reason for the reduction. The tenant claims they were coerced in agreeing to a reduction in the rent because of claimed poor internet service and a lack of cable TV service *after* they entered into the tenancy agreement. The landlord provided a document dated August 26, 2015 in respect to the reduction of rent. The tenant agrees that on October 22, 2015 they received a 2 month Notice for Landlord's Use of Property for the reason the landlord wants the unit for occupation by their aging parent - which the tenant disputes – claiming the landlord is using this Notice avenue to end the tenancy rather than addressing their requests and complaints respecting lack of TV cable and internet service. The tenant agrees that on December 02, 2015 they received a 10 Day Notice to End tenancy for Unpaid Rent. The tenant had 5 days to dispute the 10 Day Notice to End and did so by amendment to their application on December 07, 2015. The tenant and landlord agree the rent for December 2015 has not been satisfied and neither has the rent been paid for January 2016.

The landlord testified that their mother has moved from their previous home and is residing with them until the basement suite becomes available. The landlord provided a letter from their mother's medical physician dated December 03, 2015 stating that the 70 year old mother and patient has multiple medical issues and would greatly benefit from moving from Surrey into Vancouver closer to medical services and her daughter and that this need would only increase

as the patient aged. The landlord also provided the notice to end given by their mother at the previous tenancy. The landlord testified that the rental unit is for the sole purpose of housing her aging mother and for the landlord to better support her mother.

The tenant's application documents span their monetary claim as \$360.00 to \$5000.00, if required to move. However the tenant testified their monetary claim is for \$720.00. The tenant orally withdrew their claim respecting heat and the provision of heat. The tenant claims loss of useable internet service, cable TV, and lack of water pressure at their shower head. The tenant also seeks compensation for loss of quiet enjoyment and harassment by the landlord. The tenant claims the landlord is continually contacting them by e-mails and continually showing up unannounced and without notice, and creating undue noise above their basement unit. The parties provided evidence the tenant has complained about noise emanating from the upper unit since the outset of the tenancy. The landlord disputed the tenant's claims of harassment and intrusions and testified they have small children and some sound from foot traffic is unavoidable.

The landlord did not dispute the lack of water pressure at the tenants' shower head, the absence of cable TV, nor the adequacy of the wireless internet service to the unit.

*The tenant provided a witness: CG – a friend of the witness.*

The witness testified they have visited the tenant at which times they had knowledge the landlord's mother resided with the landlord. The witness also testified they viewed e-mails from the landlord which they claim were "disturbing" and should not be sent by a landlord, however did not elaborate. The witness claims they had knowledge the landlord, "showed up unannounced", and on one occasion knocked on the tenant's door without providing forewarning. The witness also testified as to the lack of cable TV and poor internet service while visiting, and that upstairs foot traffic was noticeable and intrusive.

The landlord disputed the claims of the witness and argued neither the witness nor tenant have any proof the tenant was sent inappropriate e-mails. The landlord also disputed the claims of improper intrusions and, again, explained the presence of children in the upstairs accommodations sometimes make noise which naturally would transmit to the suite below.

### **Analysis**

Based on the evidence of both parties I find as follows.

The tenant was given a 2 Month Notice to End Tenancy for landlord's Use for the reason the landlord wants the unit to be occupied by their 70 year old parent. The tenant disputes the validity of the landlord's Notice and claims the landlord's intention of the notice is not a good faith intention. The landlord and tenant have provided the landlord's mother recently started residing with the landlord. The landlord has provided evidence their mother recently vacated their previous residence in Surrey, in concert with their evidence from the mother's physician recommending a move closer to the daughters support and medical services due to her age and medical issues. I accept the landlord's evidence establishing the landlord gave the tenant a 2 Month Notice for

Landlord's Use in good faith and for valid reason. The tenant determined to dispute the Notice and claims they do not want to vacate on the terms of the landlord. Meanwhile,

the tenant was served with a Notice to End tenancy for the non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent or the rent for the month thereafter, and despite their application disputing the landlord's Notice they have not provided valid evidence as to the reason for not paying the rent, nor established a right under the Act for not paying the rent. On dispute of the landlord's 2 Month Notice to End for Landlord's Use the tenant did not become entitled to withhold the prescribed compensation afforded by the 2 Month Notice, other than solely for the last month of their occupancy in accordance with Section 51(1)(1.1) of the Act. Further,

**Section 26(1)** of the Act in relevant part states:

**Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

**Section 55** of the Act, in relevant part, states as follows:

**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.

In this matter the tenant has disputed the landlord's Notice for Unpaid Rent and the landlord has made an oral request for an Order of Possession. As I have upheld the landlord's Notice I must grant the landlord's request. Based on the above facts solely respecting the 10 day Notice to End for non-payment of rent I find that the landlord is entitled to an **Order of Possession**.

In respect to the tenant's monetary claim, I find the tenant has not provided sufficient evidence establishing the landlord has *harassed* the tenant, or repeatedly caused the tenant a loss of enjoyment through their conduct or an intentional failure to protect the tenant's right to quiet enjoyment. I find the evidence advanced by the tenant as well as their witness is not enough to support the tenant's arguments respecting this aspect of the tenant's application. None the less, I find the parties have presented evidence the landlord was notified of undue commotion and intrusive nature of the noise from the upstairs suite and the landlord was effectively dismissive of the complaints. In this regard, on balance of probabilities, I find the tenant is owed compensation for loss in the nominal amount of \$250.00.

I find the parties contracted for the tenant to receive cable TV service and Internet service upon entering the tenancy agreement on August 24, 2015 and the parties effectively agree the tenant was not provided with cable TV, nor provided adequate Internet service because of poor wireless Internet strength. I also find the tenant's claim for adequate and useable water pressure at their shower head reasonable and I am satisfied this aspect of the dispute has never been remedied. The landlord did not dispute the inadequacy of the Internet service and the lack of cable TV, yet does not dispute they contracted for the tenant to receive these services with the rent. I find the tenant is entitled to compensation for lack of water pressure to their shower head in the set amount of \$125.00. I find the tenant is entitled to compensation for lack of cable TV in the set amount of \$120.00. I find the tenant is entitled to compensation for lack of useable wireless Internet service in the set amount of \$100.00, for a **sum award of \$595.00**.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective 2 days** from the day it is served on the tenant. The tenant must be served with this Order of Possession. 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.

**I Order** the tenant may reduce the amount of their award of **\$595.00** from rent owed the landlord.

**This Decision is final and binding on both parties.**

*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 05, 2016

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Residential Tenancy Branch