



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNR, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside 2 notices to end tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should either of the notices to end tenancy be set aside?

### Background and Evidence

The facts are not in dispute. The tenancy began in the summer of 2014 and monthly rent was set at \$750.00 per month, payable in advance on the first day of each month. On December 1, 2015 the landlord served a one month notice to end tenancy (the "Cause Notice") on the tenant. The tenant paid just \$375.00 of her rent in the month of December. On December 10, the landlord served on the tenant a 10 day notice to end tenancy for unpaid rent (the "Rent Notice").

The tenant testified that she withheld her rent because she wanted the landlord to perform certain repairs in the rental unit and attend to noise issues.

### Analysis

Section 26 of the *Residential Tenancy Act* provides that tenants must pay rent when it is due regardless of whether the landlord is complying with the Act or tenancy agreement unless the tenant has a right under the Act to withhold rent. The Act specifies very limited circumstances under which the tenant may withhold rent. These include, overpayment of rent or a security deposit, having been served with a 2 month notice to end tenancy for cause or pursuant to an order from an arbitrator. I find that the tenant did not have legitimate cause under the Act to withhold her rent.

I find that the tenant received the Rent Notice on December 10 and as of the date of the hearing has not paid the rental arrears. I find that the tenant still owes the landlord \$375.00 in rent for December and I find that the landlord has cause to end the tenancy. I therefore dismiss the tenant's application for an order setting aside the Rent Notice. I also dismiss the application for an order setting aside the Cause Notice. As the tenancy will be ending, it is not necessary to address the Cause Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the 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. The landlord asked that the order be effective on February 29, 2016 and I find that to be an appropriate effective date. The tenant remains obligated to pay her full rent in the month of February as well as the rental arrears for the month of December.

I note that the tenant agreed that she would not smoke in the rental unit for the duration of the tenancy.

### Conclusion

The tenant's claim is dismissed and 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 27, 2016

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Residential Tenancy Branch

