



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated January 11, 2016.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### Preliminary Matter – Request for an adjournment:

The representative of the tenant requested an adjournment. She stated that the Advocate who was looking after the tenant's interest is ill and has requested that she appear to request an adjournment.. The tenant is elderly and suffers from dementia. The landlord opposed the request for an adjournment. He stated the tenant failed to pay the rent for January and February and \$1350 is owed. The rent for March has not been paid. He further stated it would be prejudicial for the landlord to adjourn the matter as it would result in a further loss of rent. After hearing the submissions of the parties I determined it would not be appropriate to grant an adjournment for the following reasons:

- a. The application was filed by the Tenant.
- b. Section 26(1) of the Residential Tenancy Act provides as follows:

### **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.

The representative of the tenant stated it is unclear whether the tenant has withheld the rent or whether he is unable to pay the rent. In any event the representative of the tenant was not able to identify any defense on the merits that might be available to the Tenant.

- c. I determine the delay and prejudice to the landlord outweighed any possible benefits that could be achieved by granting an adjournment as the representative of the tenant was not able to identify any defense on the merits.

As a result I denied the request for an adjournment

I find that the Notice to End Tenancy was personally served on the Tenant on January 11, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord on January 15, 2016. With respect to each of the applicant's claims I find as follows:

#### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated January 11, 2016?

#### Background and Evidence

The tenancy began on December 1, 2015 when the tenant rented a bachelor apartment in the rental property. At his request he transferred to the rental unit some time in the middle of December 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$675 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$290 at the start of the tenancy.

#### Analysis:

I determine there is no basis for an order cancelling the 10 day Notice to End Tenancy. The Notice is valid. The tenant owed rent of \$675 at the time the Notice was served. The tenant failed to pay the rent for February and a further \$675 is owed. The tenant has not paid the rent for March. The Residential Tenancy Act does not permit a tenancy to withhold the rent in circumstances such as this until the tenant has first obtained an order from an arbitrator permitting him to do so. The Details set out in the Application allege problems with the rental unit. However, those issues are not part of

this application. The tenant would have to file another Application seeking compensation for the alleged defective condition of the rental unit.

Determination and Orders:

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for March 15, 2016.

The representative of the tenant stated that the tenant has said he has the money to pay the rent. The landlord stated that if the tenant pays the arrears including the rent for March totaling \$2025 he will reinstate the tenancy.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: March 01, 2016

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Residential Tenancy Branch

