



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MNDC, RP, RR

### 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; for a monetary Order for money owed or compensation for damage or loss; for authority to reduce the rent, and for an Order requiring the Landlord to make repairs.

The Tenant stated that on August 25, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the female Landlord. The Landlord stated that she received these documents on August 25, 2016; she informed the other Landlord, who is her husband, of the hearing; and that her husband asked her to represent him at these proceedings. In the absence of evidence to the contrary, I find that these documents have been served in accordance with sections 89(1)(a) and 89(1)(b) of the *Residential Tenancy Act (Act)*; however the male Tenant did not appear at the hearing.

On October 07, 2016 the Landlord submitted 52 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was posted on the Tenant's door on October 07, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 07, 2016 the Landlord submitted a memory stick to the Residential Tenancy Branch. The Landlord stated that this memory stick was posted on the Tenant's door on October 07, 2016. The Tenant acknowledged receipt of this memory stick but she said she has been unable to access the information on the device.

Rule 3.10 of the Residential Tenancy Branch Rules of Procedure stipulates that digital evidence must be presented in a format that is accessible to all parties and that, before the hearing, the party submitting the digital evidence must determine that the other party is able to gain access to the evidence. As the Tenant has indicated that she has been unable to access the information on the device and the Landlord has submitted no evidence to establish that the Tenant was able to access the information, the memory stick was not accepted as evidence for these proceedings.

The Tenant stated that when she filed her Application for Dispute Resolution she provided the Residential Tenancy Branch with a copy of the Notice to End Tenancy that is the subject of this dispute, which she presumes was copied by the Residential Tenancy Branch and retained by them as evidence. The Tenant was advised that I do not have a copy of the Notice to End Tenancy that was submitted by the Tenant and that the Residential Tenancy Branch does not copy evidence on behalf of either party. I find that the Tenant did not submit a copy of this document, although I accept that she believes one had been copied and retained by the Residential Tenancy Branch.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

At the outset of the hearing the female Landlord indicated the names on the Landlords' names on the Application for Dispute Resolution have been spelled incorrectly. With the consent of both parties the Application for Dispute Resolution was amended to reflect the correct spelling of the Landlords' names, as provided by the Landlord at the hearing.

### Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Is there a need for an Order requiring the Landlord to make repairs?

Is the Tenant entitled to compensation for deficiencies with the rental unit?

### Background and Evidence

The Tenant stated that:

- this tenancy began on September 01, 2015;
- there is no written tenancy agreement;
- she is still living in the rental unit;
- rent of \$550.00 is due by the last Wednesday of each month;
- the Landlord is responsible for paying the hydro bill;
- on August 16, 2016 she located the first page of the One Month Notice to End Tenancy for Cause, which is dated August 15, 2015, on the door of her rental unit;
- she did not locate the second page of the One Month Notice to End Tenancy for Cause on her door;
- she has never received the second page of the One Month Notice to End Tenancy for Cause that is the subject of this dispute;
- rent for April, May, June, July, August, and September has been mailed to the Landlord by the Provincial Government;

- she understands the mail has been delivered to the Landlord's locked mailbox, which she cannot access;
- she understands the Landlord has not collected the rent payments that were mailed in the past several months; and
- rent has not been paid for October of 2016.

The Landlord stated that:

- she does not know when this tenancy began;
- that the male Landlord entered into this tenancy agreement without her knowledge;
- she does not believe there is a written tenancy agreement;
- the Tenant is still living in the rental unit;
- the male Landlord, who is her husband, is currently incarcerated and is unable to manage issues related to the tenancy;
- she is now acting on behalf of her husband in regards to this tenancy;
- her husband told her that rent of \$650.00 was due by the first day of each month;
- she believes the Landlord is responsible for paying the hydro bill;
- on August 15, 2016 she posted both pages of the One Month Notice to End Tenancy for Cause, which is dated August 15, 2016, on the door of her rental unit;
- she submitted a copy of the One Month Notice to End Tenancy for Cause, dated August 15, 2016, to the Residential Tenancy Branch with her evidence package
- she has been told that rent for April, May, June, July, August, and September was mailed to the male Landlord by the Provincial Government;
- she has been told that the rent has been delivered to the male Landlord's locked mailbox, which she cannot access;
- she has been told that the male Landlord has not collected the rent payments that were mailed in the past several months; and
- rent has not been paid for October of 2016.

The parties were advised that the first page of the One Month Notice to End Tenancy for Cause was submitted in evidence by the Landlord but the second page of the Notice was not in the package. The Landlord stated that she is certain that both pages of the Notice were posted on the Tenant's door on August 15, 2016; she is certain she provided the second page of the Notice to the Residential Tenancy Branch and the Tenant as evidence for these proceedings; and that she has a copy of the second package in the evidence package before her.

The Landlord was asked to read the reason for ending the tenancy that the Landlord has checked on the second page One Month Notice to End Tenancy for Cause and she replied that it reads "removal based on government order". The Landlord was asked on two occasions if she was repeating the exact words that appeared on the Notice and she replied that she was.

When the Landlord was advised that the One Notice to End Tenancy for Cause does not have a phrase on the second page that reads "removal based on government order", she replied that she must be reading from her notes. At this point she acknowledged she could not locate the second page of the One Month Notice to End Tenancy that is the subject of these proceedings.

The Tenant is seeking an Order requiring the Landlord to restore electrical service to the rental unit. In support of this application the Tenant stated that:

- service to the residential complex and her rental unit was terminated in April of 2016;
- electrical service has not been restored since that time;
- in April of 2016 she informed the male Landlord that electrical service had been terminated;
- the male Landlord was incarcerated shortly after the electrical service was terminated;
- she could not contact the male Landlord during his incarceration;
- she did not have any contact information for the female Landlord or any other agent for the Landlord until August 13, 2015, so she could not ask her to restore electrical service;
- prior to being incarcerated the Landlord brought a generator to the residential complex, which was controlled by another occupant of the residential complex;
- the generator provided by the Landlord stopped working sometime in May of 2016;
- another occupant of the residential complex purchased a generator for his/her use; and
- the owner of the other generator occasionally allows her to access power from the generator, with the use of an extension cord.

In response to the application to restore electrical service to the rental unit the Landlord stated that:

- she was informed that electrical service at the residential complex was terminated sometime in March or April of 2016;
- she was informed that the electrical service was terminated because an unknown third party was stealing electricity;
- she was fined several thousand dollars in regards to the termination of electrical service;
- she was informed that before electrical service will be restored she must obtain an electrical inspection, obtain an electrical permit from the city; and then apply to her provider to have the service restored;
- she understands that the male Landlord arranged to have an electrical inspection completed in March or April of 2016;
- she does not believe that any other actions were taken to have the electricity restored;
- she did not take any actions to have the electricity restored as she did not realize anyone was living in the rental unit until sometime in August of 2016;

- she cannot afford to have the electricity restored;
- the male Landlord arranged to have a generator installed at the rental unit; and
- she understands that generator is providing service to the residential complex, including the Tenant's rental unit.

The Tenant is seeking an Order requiring the Landlord to repair her toilet. In support of this application the Tenant stated that:

- her toilet is leaking so badly that she turns the water to the toilet off until she needs to flush the toilet, at which time she temporarily turns on the water;
- she informed the male Landlord of the leak in April of 2016;
- the leak has never been repaired because the male Landlord was incarcerated;
- she did not have any contact information for the female Landlord or any other agent for the Landlord until August 13, 2015, so she could not ask the Landlord to repair the toilet; and
- the toilet is still in need of repair.

In response to the application to repair the toilet the Landlord stated that she was not aware the toilet needed repairing until she was served with the Tenant's Application for Dispute Resolution and that the toilet has not been repaired.

The Tenant is seeking compensation for inconveniences and costs associated to living with these deficiencies with the rental unit.

### Analysis

On the basis of the testimony of the Tenant and in the absence of testimony from the male Landlord who entered into a tenancy agreement with the Tenant, I find that she agreed to pay monthly rent of \$550.00. I find that her testimony is more reliable than the testimony of the female Landlord, who stated that she was told that rent was \$650.00, as the female Landlord's evidence is hearsay.

Section 47(1)(k) of the *Act* authorizes a landlord to end a tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Section 47(3) of the *Act* stipulates that to be effective a notice served pursuant to section 47 of the *Act* must comply with section 52 of the *Act*. Section 52(d) of the *Act* stipulates that to be effective a notice to end tenancy pursuant to section 47 of the *Act* must state the grounds for ending the tenancy. The One Month Notice to End Tenancy that was served in these circumstances cites the reason for ending the tenancy on the second page of the Notice.

I favour the testimony of the Tenant, who stated that she did not receive the second page of the One Month Notice to End Tenancy, over the testimony of the Landlord, who stated that she is certain that she posted the second page of the One Month Notice to

End Tenancy on the Tenant's door on August 15, 2016 and that she served the Tenant with the second page of the Notice in the Landlord's evidence package.

I favoured the Tenant's evidence over the Landlord's evidence in regards to service of the second page of the One Month Notice to End Tenancy because:

- I found the Tenant's testimony to be consistent and forthright;
- the Landlord bears the burden of proving the second page of the Notice was served to the Tenant and the Landlord submitted no documentary evidence to refute the Tenant's testimony that it was not served;
- the Landlord did not submit the second page of the Notice to the Residential Tenancy Branch, although she is certain that she did so; and
- the Landlord's testimony regarding the second page was inconsistent and, therefore, unreliable.

In determining that the Landlord's testimony regarding the second page of the One Month Notice to End Tenancy was inconsistent, I was heavily influenced by the fact she testified, on three occasions, that she was reading from the second page of the Notice and subsequently acknowledged that she was not in possession of the second page at the time of the hearing.

As the Landlord has submitted insufficient evidence to establish that the Tenant was served with the second page of the One Month Notice to End Tenancy, I find that she has failed to establish that the Notice declared the grounds for ending the tenancy, as is required by section 52(d) of the *Act*. As the Landlord has failed to establish that the One Month Notice to End Tenancy that was served complies with section 52(d) of the *Act*, I find that the Landlord has failed to establish that the One Month Notice to End Tenancy is effective.

As the Landlord has failed to establish that the One Month Notice to End Tenancy is effective, I grant the Tenant's application to set aside the One Month Notice to End Tenancy that is dated August 15, 2016.

Section 27(1)(a) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.

On the basis of the undisputed evidence I find that the Landlord agreed to provide electrical service to the rental unit as a term of this tenancy. I find that electrical service is essential to the Tenant's use of the rental unit as living accommodation and that the Landlord is, therefore, obligated to provide the Tenant with electrical service.

I therefore Order the Landlord to **immediately** take whatever steps are necessary to have electrical service restored to the rental unit.

I find that the Landlord's failure to provide electrical service, as required by section 27(1)(a) of the *Act*, has significantly reduced the value of this tenancy. This assessment is based on my conclusion that without electricity a tenant typically cannot perform a variety of daily living activities, such as cooking, refrigerating food, using hot water, using electronic devices, and lighting rooms at night. I find that the Landlord's failure to provide electricity reduced the value of this tenancy by 50% and, pursuant to section 67 of the *Act*, I award the Tenant compensation, in the amount of \$1,925.00, for being without electricity for approximately seven months. (7 X \$275.00 for April, May, June, July, August, September, and October of 2016)

In the event that electrical service is not restored by October 31, 2016 I further authorize the Tenant to reduce the monthly rent by \$275.00, effective November 01, 2016, and to reduce each subsequent monthly rent payment by \$275.00 until such time as electrical service is restored to the rental unit.

In adjudicating this matter I have placed little weight on the Landlord's submission that a generator has been provided for the residential complex. Even if I accepted that a single generator was available for the residential complex, I find that there is no evidence to refute the Tenant's testimony that the generator does not provide her unit with power on a regular basis.

I find that a properly functioning toilet is essential to the Tenant's use of the rental unit as living accommodation and that the Landlord is, therefore, obligated to repair the toilet in the rental unit.

I therefore Order the Landlord to **immediately** repair or replace the toilet in the rental unit.

I find that the Landlord's failure to repair the toilet, as required by section 27(1)(a) of the *Act*, has reduced the value of this tenancy by 10%. This assessment is based on my conclusion that although the toilet can be used, it is extremely inconvenient to have to turn the water on and off in order to use the toilet and prevent it from leaking. Pursuant to section 67 of the *Act*, I award the Tenant compensation, in the amount of \$385.00, for being without a properly functioning toilet for approximately seven months. (7 X \$55.00 for April, May, June, July, August, September, and October of 2016)

In the event that toilet is not repaired by October 31, 2016 I further authorize the Tenant to reduce the monthly rent by \$55.00, effective November 01, 2016, and to reduce each subsequent monthly rent payment by \$55.00 until such time as the toilet is repaired.

### Conclusion

The One Month Notice to End Tenancy, dated August 15, 2016, is set aside. This tenancy continues until it is ended in accordance with the *Act*.

The Landlord is obligated to comply with Orders to repair the toilet and restore electrical service to the rental unit, as outlined in this decision.

The Tenant has established a monetary claim of \$2,310.00, which represents compensation for being without electricity and for living with a malfunctioning toilet for approximately seven months. Based on these determinations I grant the Tenant a monetary Order for \$2,310.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that pursuant to section 72(2) of the *Act*, the Tenant may opt to recover this \$2,310.00 by deducting all or a portion of that amount from rent due to the Landlord.

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: October 18, 2016

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Residential Tenancy Branch



