



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CML PROPERTIES - CONNAUGHT MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNR, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant to cancel a 10 Day Notice to End for Unpaid Rent, as well as a monetary order for loss and to recover the filing fee.

Both parties attended the hearing and were given opportunity to mutually resolve their dispute to no avail. The parties were given opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

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

Should the landlord's 10 Day Notice to End be cancelled?  
Is the tenant entitled to the monetary amount claimed?

### **Background and Evidence**

The tenant still resides in the unit. Rent in the amount of \$865.00 is payable in advance on the first day of each month. The tenant failed to pay any rent in the month of March 2017 and on March 16, 2017 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent for March 2017 in the amount of \$865.00. The tenant has further failed to pay rent for the month of April 2017.

The tenant testified they withheld March 2017 rent as their determined compensation for an incident which occurred March 01, 2017, and events following. The parties agreed that on March 01, 2017 the landlord used a paint thinner or mineral spirit while working in an area adjacent to the rental unit. The landlord acknowledges the fumes or evaporative effect of the spirit somehow entered the tenant's unit but that the

occurrence was inadvertent and regrettably unfortunate. The tenant testified that when they arrived home the fumes were noticeably strong and immediately caused them physical discomfort and angst. They alerted the landlord and the parties' communication over the incident became disputatious and unproductive toward an overall remedy over the weeks following. The tenant testified they attempted to immediately ventilate the rental unit however the effects did not quell and they were not able to remain in the unit for that night and the following 2 nights. The tenant testified that thereafter the odor of paint thinner lingered for several days although greatly reduced. The tenant claims that in the period after alerting the landlord to their discomfort the landlord's conduct was unsympathetic and unprofessional. The landlord testified the tenant was over reactive and abusive in their conduct regarding the incident.

The tenant testified they stayed in a hotel for the 2 nights immediately after the incident and on the third night slept in their car. The landlord acknowledged the tenant's circumstances agreeing it was reasonable for the tenant to sleep elsewhere for an initial period of time. Later in March 2017 the landlord alerted the tenant as to the non-payment of the rent for March 2017 whilst providing the tenant an apology for their earlier negative experience. The landlord alerted the tenant they were obligated to issue a 10 Day Notice to End to protect the owner's interests, while also offering reimbursement, "for 2 or 3 nights" with the landlord's permission the tenant could deduct the amount of hotel invoices from the outstanding rent on provision of copies of same to the landlord. The parties continued to disagree in respect to a resolution to his matter. The tenant asserts that their experience with the paint thinner fumes at the outset of March 2017 demands they be compensated the equivalent of one month's rent. The landlord testified as to their willingness to compensate the tenant for a hotel invoice in the amount of \$276.00.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

Based on the parties' evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant has not paid the outstanding rent and has further incurred additional arrears to date. It must be known that **Section 26** of the Act states that a tenant must pay all of the rent when it is due, unless,

1. The tenant has an Arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit

4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

In this matter the landlord had authorized the tenant could deduct a quantum of rent in the amount of a hotel invoice, as applicable. The tenant instead determined not to pay any rent. Despite their application to cancel the landlord's Notice to End I find the tenant did not have a valid reason to not pay the rent. I find the landlord's Notice to End is valid and was issued in the approved form.

**Section 55(1)** of the *Act* provides that if a tenant's application to dispute a 10 day Notice to End Tenancy Due to Unpaid Rent is dismissed or the landlord's notice is upheld the landlord is entitled to an Order of Possession if the landlord's notice complies with Section 52 of the *Act*. I find that the landlord's Notice to End for Unpaid Rent complies with Section 52 of the *Act* and as a result I uphold the landlord's Notice and must grant the landlord an **Order of Possession**, with the effect the tenant's application to cancel the Notice to End is dismissed.

**I grant** the landlord an **Order of Possession effective two (2) days** after it has been served on the tenant. If necessary, this Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

In respect to the tenant's monetary claim, I accept the evidence of both parties the tenant experienced an unreasonably disturbing occurrence for a period of at least several days following ingress of paint thinner fumes from the landlord's nearby work. And, that despite the inadvertent nature of this occurrence the tenant suffered some loss of use and quiet enjoyment for which compensation is reasonable. I accept the parties' testimonial evidence that the tenant's expended \$276.00 for alternate accommodations as a result of the loss.

As a result of the above, I grant the tenant \$276.00 for their hotel expense. I further grant the tenant the equivalent of pro-rated rent for 3 days in the amount of \$83.71 and, additional compensation for loss of quiet enjoyment in the amount of \$200.00, for an award of \$559.71.

As the tenant has been fractionally successful in this application I grant the tenant one half of their filing fee in the amount of \$50.00, for a sum award of **\$609.71**.

In concert with the tenant's preference in this matter,

**I Order** the tenant may deduct their award of \$609.71 from a current financial obligation to the landlord inclusive of rent.

**Conclusion**

The tenant's application to cancel the landlord's Notice for Unpaid Rent is dismissed.

The balance of the tenant's application in relevant part is granted.

The landlord is given an Order of Possession pursuant to Section 55(1) of the Act.

**This Decision is final and binding.**

*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: April 26, 2017

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Residential Tenancy Branch