



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR CNC RP LRE OLC MNDC FF

### **Introduction**

This hearing was convened in response to an application by the tenant, as amended, to cancel Notices to End Tenancy, for *unpaid rent* and for *cause*, dated March 23 and April 05, 2017, and, March 23 and March 27, 2017 respectively. The tenant also sought repairs to the unit, to alter the landlord's right to enter the unit, compensation for mailing costs, for the landlord to comply with the Act and to recover the filing fee.

Both parties attended the hearing. The parties were given opportunity to mutually resolve their dispute to no avail. The parties acknowledged exchange of evidence. They were given opportunity to present all relevant evidence and testimony in respect to the application 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.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the request for repairs is not sufficiently related to the main issue, which is to cancel the Notices. For these reasons, I *preliminarily dismissed* the tenant's application for repairs with leave to reapply.

The hearing advanced on the merits respecting to the balance of claims.

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

Is a notice to end tenancy for unpaid rent valid?

Is there *sufficient* cause to end the tenancy?

Should the landlord's right to enter the unit be suspended or made conditional?

Is the tenant entitled to the monetary amount claimed?

## **Background and Evidence**

It must be noted it is relevant the parties attended a dispute resolution hearing on March 21, 2017 and a Decision and Orders were issued.

The rental unit is a 3 bedroom, 2 bathrooms with den house. The tenancy started February 01, 2017. The payable monthly of \$2000.00 is due on the 1<sup>st</sup> of each month. On March 21, 2017 a Director's Decision Ordered that the electricity and gas utilities for the unit are included in rent and that any payments made by them during the tenancy (past or future) may be deducted from the rent obligation, provided the tenant first gives the landlord proof of having made such payment. It is of relevance that the rental unit is a house, and that the landlord is situated in California USA, and the agreed arrangement for the payment of rent is by e-transfer.

The hearing had benefit of copies of the 4 Notices to End in dispute in this matter.

**1. The landlord testified the 10 Day Notice to End for unpaid rent dated March 23, 2017** was issued to request a \$1000.00 pet damage deposit for a dog, and not rent or utilities. The landlord collaterally testified they strongly oppose the tenant having a dog and think they are in breach of the tenancy agreement for having a dog(s). During the hearing the parties were advised that the Notice does not operate to compel payment of a pet damage deposit. Collaterally, the landlord testified they did not agree to the tenant having a dog and the Notice was to highlight the tenant's non-disclosure of a dog. As such, during the hearing the parties were advised that the Notice is flawed and will be cancelled.

**2. The landlord acknowledged the 1 Month Notice to End for Cause dated March 23, 2017** did not contain reasons for the Notice. As such, during the hearing the parties were advised that the Notice is flawed and will be cancelled.

**3. The landlord testified the 10 Day Notice to End for unpaid rent dated April 05, 2017** stated the tenant failed to pay the applicable rent for April 2017 when due. The tenant submitted into evidence that the landlord was sent an Interac e-transfer for \$1203.25 on April 01, 2017 from MM. The landlord acknowledged receiving an e-transfer for \$1203.25 from MM but despite knowing of MM and their affiliation with the tenant to date has not accepted the payment from Interac. The landlord claims they were advised by the RTB not to accept rent from anyone other than the tenant to the tenancy agreement. As a result, the landlord determined the tenant had not made a rent payment and issued the Notice to End. The tenant submitted a calculation deducting

utility payments to date as well as the filing fee for the previous hearing, as Ordered: resulting in \$1203.25. The parties agree the payment sender as the tenant's friend, and attendee to this hearing, also known to the landlord because of previous payments from this sender on behalf of the tenant, specifically the original security deposit and the first month's rent. The tenant explained their financial situation as being mitigated and therefore having to rely on their friend, with their authorization, to transact payment obligations to the landlord on their behalf.

**4. The parties agreed the 1 Month Notice to End for Cause dated March 27, 2017 was issued for the following reasons,**

- *Tenant has allowed an unreasonable number of occupants in the unit.*
- *Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or put the landlord's property at significant risk.*
- *Tenant or person permitted on the property by the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenant disputes the relevant Notices to End.

The landlord provided the following testimony and respective submissions in support of the reasons for issuing the Notice to End for Cause dated March 27, 2017.

- The landlord learned that the rental unit is occupied by 7 people instead of 6 as was originally understood by the landlord. The landlord thinks there may also be an 8<sup>th</sup> person occupying the unit, MM.
- The landlord learned through the previous hearing the tenant altered the tenancy agreement (the contract) in respect to the gas and electricity utilities.
- The landlord claims the tenant has misrepresented the contract by altering the contract and by not acknowledging they have 2 dogs before signing the tenancy agreement.
- The tenant has 2 dogs against the wishes of the landlord and has not paid a pet deposit.
- The landlord learned of a fire at the unit attended by the fire department, however has no other details.
- The landlord learned from one of their representatives the tenant has caused damage to the recently installed flooring, with a marker.
- The landlord claims the tenant has been unlawful in not being truthful in

general, allegedly representing themselves as a lawyer to the landlord's agents threatening legal action, generally misrepresenting the contract and harassing the landlord's agents.

The landlord testified they are very anxious about the tenancy situation, compounded by the fact they are in another country and have received charged reports from multiple numbers of sources and representatives. The landlord's conduct in the hearing clearly reflected their angst and heightened stress. The landlord testified having lost all trust in the tenant and blaming themselves for agreeing to the tenancy.

The tenant's response in testimony and submissions was,

- The house is sufficiently large to comfortably accommodate the 2 parents and their 5 children. MM testified they have their own home and do not reside with the tenant and are not an occupant.
- The matter of the gas and electricity utilities vis a vis an altering of the contract was resolved in the previous hearing and does not fatally invalidate the tenancy agreement.
- The pet dog was disclosed in the original advertisement by the tenant seeking accommodations to which the landlord responded offering their house to the tenant. The tenant provided the original tenant's advertisement into evidence as proof.
- The landlord did not include any provision in their tenancy agreement mentioning or prohibiting pets.
- The claimed fire was a build-up of "lint" in the furnace exhaust ducting. The relevant alarm/detector in the house did not sound. There was no damage as a result. The fire department attended at the tenant's request to check and left without issues being noted other than to make any detectors functional.
- Despite the landlord's concerns regarding markings on the flooring or walls the tenant provided that all have been successfully removed without residual damage.
- The tenant testified the landlord's multiple representatives were being directed by the landlord to conduct an unreasonable number of visits to the rental unit and at unreasonable times and purportedly lurking, therefore the tenant determined to halt inspections or visits with a view to solely allow the landlord's agents access in strict compliance with the Act.

The tenant seeks for the landlord's right to enter the unit, via the landlord's agents or representatives be suspended or be made conditional so as not to be intrusive as the tenant claims they have behaved thus far. The landlord testified they have expressly

employed others in attempts to monitor the tenancy because of their distrust and because of their distance from the rental unit.

The tenant seeks to recover their mailing costs to the landlord in the United States. The tenant claims that the number and frequency of the landlord's Notices to End are unreasonable and without basis and caused them unnecessary costs to send the landlord amendment updates to the United States every time the landlord issued a Notice to End. The tenant seeks costs of \$34.44 for mailing costs.

### **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).*

In concert with the evidence section of this Decision the 2 Notices to End dated March 23, 2017 are invalid and effectively **cancelled** and of no effect.

While I accept the landlord was told they should not accept rent from anyone other than a tenant, I do not accept that MM was a stranger to the landlord when they were sent funds for the rent on April 01, 2017 for April 2017. The landlord chose to not accept the rent and it remains available to them to do so. I find the landlord's 10 Day Notice to End dated April 05, 2017 is ineffective to end the tenancy and is **cancelled** and of no effect.

In this type of application, the burden of proof rests with the landlord to provide evidence a Notice for Cause was validly issued for *sufficient* reasons. The tenant bears the burden to prove they paid the rent indicated in a Notice to End for unpaid rent, or in the least attempted to pay the rent.

I find that a previous Decision in this matter found that the tenant altered the tenancy agreement by indicating that gas and electricity were inclusive of the rent. However, I find that Decision did not determine the tenant's alteration was a misrepresentation according to the parties' ancillary communications so as to invalidate the written agreement. The previous Decision determined the issue of the utilities. I find that other than what has previously been resolved in this matter, I have not been presented new evidence to establish the remainder of the agreement has been "misrepresented" or otherwise invalidated as claimed by the landlord.

I find that 7 people residing in a large house, the majority being children is not an unreasonable number of occupants. I find the landlord has not proven the tenant has allowed an unreasonable number of occupants in the unit.

I find the landlord has not proven they were unaware the tenant had a dog before extending their offer of a tenancy via the tenancy agreement to the tenant. Pursuant to **Section 18(1)** of the Act the landlord's agreement does not reflect it prohibits pets or otherwise indicates restrictions regarding pets. It must further be noted that indicating a pet damage deposit is *not applicable* solely indicates that such a deposit is not required, but it does not prohibit pets as claimed by the landlord. I find the tenancy agreement is valid.

I find the landlord has not established that a purported fire incident which concerned the landlord was due to conduct of the tenant or that it resulted in damage.

Again, while I accept that learning of a new floor having marks is concerning to the landlord, I find that in contrast to the tenant's evidence the landlord has not proven the marks are permanent so as to say the floor has been damaged.

Under the circumstances I find the tenant has not been wholly truthful or forthcoming with the landlord to avoid the landlord stress. I find the tenant has likely been uncooperative with the landlord's agents in their endeavour to stop what they have presented as intrusive conduct on the agent's part. I find the tenant's application seeks for the landlord and by de-facto their agents, to strictly Comply with the Act in respect to the landlord's right to enter the rental unit, by way of just notice and for just cause. Under the circumstances, I find the tenant may have acted *unlawfully*, however the landlord has not established the tenant has engaged in *illegal activity* jeopardizing a lawful right or interest of the landlord.

Ending a tenancy is a serious matter. Despite the many concerns expressed by the landlord I find the sum of the evidence is not *sufficient* to end the tenancy pursuant to the Notice to End. The landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient* evidence that the Notice to End for Cause is for sufficient reason so as to end the tenancy. Therefore,

**I Order** the Notice to End dated March 27, 2017 is **cancelled**, or set aside. If necessary, the landlord is at liberty to issue a Notice to End for sufficient and valid reason(s).

I find that it is not necessary to suspend or set conditions on the landlord's right of entry pursuant to **Section 29** of the Act. None the less, I find it necessary for the landlord to understand that their right to enter the rental unit is restricted as per **Section 29**. Therefore,

**I Order** the landlord to comply with all prescribed portions of **Section 29** of the Act. If the landlord does not do so, the tenant is at liberty to file for dispute resolution seeking additional remedy.

In respect to the tenant's request for mailing costs I find that such costs are typically litigation costs for which each party is personally responsible and as such are not routinely compensable. However, having found the landlord's 4 Notices to End without merit and the tenant repeatedly compelled to dispute these Notices, *in this case* I find reimbursement for the requested mailing costs to the United states is appropriate, and I grant the tenant their requested amount of **\$34.44**.

As the tenant was successful in this application I grant the tenant recovery of their filing fee of **\$100.00** for a sum award of **\$134.44**.

**I Order** the tenant may deduct **\$134.44** from a future rent in satisfaction of the award in this matter.

### **Conclusion**

The tenant's application is in relevant part granted. The landlord's Notices to End are is set aside and are of no effect. The tenancy continues in accordance with the agreement.

**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: May 08, 2017

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Residential Tenancy Branch