



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, LRE, MNDC, OLC, PSF, RP, RR

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated May 17, 2017 and received by the tenant on May 18, 2017. She also seeks repair and compliance orders and compensation regarding claimed water leaks in the rental unit, as well as an order regarding landlord access.

The landlord applies for an order of possession pursuant to the Notice.

The Notice claims that the tenant is repeatedly late paying rent and that she has: a) significantly interfered with or unreasonably disturbed the landlord, or b) seriously jeopardized his health, safety or lawful rights and interests, or c) has put the landlord's property at significant risk, by her request for emergency repairs by the landlord and her subsequent refusal to admit him to the rental unit to attend to those repairs. Any of these claims, if substantiated, are lawful grounds for a landlord ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "Act").

Rule 2.3 of the Rules of Procedure states that claims in a application must be related and gives an arbitrator power to separate claims. In this dispute the priority claim is the question of the validity of the Notice and whether this tenancy will continue. The two applications have been given a priority hearing date because of that issue. As a result, and as stated at hearing, I dismiss the tenant's claims for compliance and repair orders and her claim for monetary compensation, with leave for her to re-apply.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant made her claim to cancel the Notice within the time allowed? Does the evidence presented during this hearing show that there are good grounds for the Notice?

Background and Evidence

The rental unit is a two bedroom apartment in a three floor, six unit apartment building.

The tenancy started in October 2015. There is no written tenancy agreement. The current monthly rent is \$900.00, due on the first of each month. The landlord holds a \$450.00 security deposit.

As a preliminary issue, the landlord claims the tenant did not make her application within the ten day period allowed and so she should not be permitted to challenge the Notice.

The tenant's advocate says the tenth day after receipt of the Notice, May 28, fell on a Sunday and that the tenant filed her application the next business day; Monday, May 29, thus she did file the application within time. She says the Residential Tenancy Branch informed the tenant that she then had three days to either pay the fee or apply for a fee waiver.

The file shows that the tenant completed her application for a fee waiver, including a required proof of income from the welfare office, on June 1, the date the welfare office statement was made.

The landlord testifies that the tenant has been repeatedly late paying rent. He says she has only paid rent on time on three occasions during this tenancy. He could not remember all three dates.

The tenant says she has been late with rent only once. She says the landlord comes by to collect rent and not always on the first of the month. Only occasionally does he issue a receipt for cash payment.

The landlord says he is always there for rent on the first of the month.

The landlord testifies that in May 2017 the tenant called him to report a water leak into her suite and that when he attended to conduct repairs she refused to let him in, demanding written notice of his entry.

The tenant says that she contacted the landlord many times because her walls were wet from a water leak and he said he would fix the problem “when I fix it.” She says that on May 16, 2017 she called him twice with no response and texted him with photos of the problem. She says the landlord showed up and scolded her for calling the health authority about the state of the rental unit and said he wanted her out. He came back an hour later and she refused to let him in without proper written notice of entry from him.

### Analysis

#### Time Limitation

Section 47 (4) and (5) of the *Act* state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The tenth day after receipt of the Notice was May 28. However, that day was a Sunday, a holiday. Section 25 (2) of the *Interpretation Act*, RSBC 1996, c. 238 provides that if the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

The tenant filed her application within the ten day period as extended by the *Interpretation Act* but she had not done all that was required of her by that day.

Rule 2.6 of the Rules of Procedure state that an application is made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch or through a Service BC office.

In this case the tenant did not pay a fee. She filed her application on May 29 and submitted her application for a fee waiver along with all necessary documents (particularly, her income statement from the welfare office) on June 1.

I find that the tenant's application was made outside the ten day period set out in s. 47 (4) of the *Act*.

Section 66 of the *Act* permits the director (and thus, an arbitrator) to extend time limits in exceptional circumstances. It provides:

**Director's orders: changing time limits**

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [*starting proceedings*] or 81 (4) [*decision on application for review*].

- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4)
  - (a) [*landlord's notice: non-payment of rent*] for a tenant to pay overdue rent only in one of the following circumstances:
    - (a) the extension is agreed to by the landlord;
    - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The effective date of the Notice in this case was June 30 and so ss. (3) is not applicable.

The tenant says she has exceptional circumstances. She produced a letter from the Residential Tenancy Branch dated May 29 indicating that she had three days to either pay for her application or make an application to waive the filing fee.

I have no doubt but that the letter was not meant to permit the tenant to avoid the time limits set by the *Act*. Rather, it was likely a three day time limit set by policy within the Branch to ensure that applications are proceeded with in a timely fashion. However, the tenant would not know that and it easy to see how she would have been misled by the letter.

I find that the tenant has established exceptional circumstances for the three day lateness of her application.

That is not the end of the matter. The landlord's position must also be considered before an extension of time is granted. Here the landlord says he rented out the tenant's rental unit for July 1st to the two tenants living in a bachelor suite in the building. He does not have a written tenancy agreement with them.

In all the circumstances, I extend the time for the tenant's application. Had the landlord presented a written tenancy agreement with two tenants for July 1 or had those persons testified that they were waiting to move in, the extension might not have been granted. However, the landlord has known that the Notice was challenged since the first few days of June and he has had plenty of time to make other arrangements with two tenants he says were to move in. I find it likely that granting this extension will not cause the landlord any significant loss.

## The Notice

### Repeated Late Rent

The ending of a tenancy is a very serious matter and a landlord proposing to uphold a challenged Notice to End Tenancy will be required to provide clear and convincing evidence to support it.

In this case the landlord has alleged "repeated late payment of rent" but has not given the tenant an indication of what months he is alleging the rent was late in. Without that foreknowledge the tenant comes to the hearing without the opportunity to prepare a reasonable defence. For that reason I would dismiss this ground for the Notice.

Additionally, a landlord who chooses to simply drop by a rental unit to collect rent is not entitled to assume that a tenant will be home. If she is not and he does not get his rent, in my view he cannot reasonably claim the rent is late.

### Landlord Refused Entry

A tenant who refuses a landlord entry when he is there to conduct emergency repairs runs a great risk of putting the landlord's property at significant risk. It should be noted that s. 29 of the *Act* permits a landlord to enter without the tenant's authorization if an emergency exists and entry is necessary to protect life or property.

In this case it is far from clear that the tenant was preventing the landlord from entering to repair something or was denying the landlord entry out of concern that the visit was for the purpose of chastising her. I find that the landlord has not proved on a balance of probabilities that the tenant wrongfully refused him entry and I dismiss this ground for the Notice.

### Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated May 17, 2017 is hereby cancelled.

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: August 01, 2017

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Residential Tenancy Branch