



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Disputes Codes: ET

### **Introduction**

The Application for Dispute Resolution filed by the landlord seeks an early end to the tenancy.

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. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy for non-payment of rent was personally served on the Tenant on December 7, 2017. I find that the one month Notice to End Tenancy was personally served on the tenant on January 12, 2018. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on January 22, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issue to be decided is whether the landlord is entitled to an Order for the early termination of the tenancy and an Order for Possession?

### **Background and Evidence:**

The tenancy began approximately 5 years ago. The tenancy agreement provided that the tenant(s) would pay rent of \$750 per month payable on the first day of each month.

### **Background:**

The tenancy began approximately 5 years ago. The landlord testified the tenant has failed to pay the rent for the last 3 months and the sum of \$2250 remains outstanding. The tenant continues to reside in the rental unit.

Analysis:

The landlord served a 10 day Notice to End Tenancy for non payment of rent on the Tenant on December 7, 2017. The tenant testified he withheld the rent because the landlord failed repair the septic system. Section 26(1) of the 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 tenant does not have a legal right to withhold the rent until he has first obtained an Order of Possession from an arbitrator.

Section 46 provides as follows:

**Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date.

I determined the landlord is entitled to an Order of Possession on the basis of that he failed to pay the rent and failed to file an Application for Dispute Resolution within 5 days to dispute the notice. The Act provides that he is conclusively deemed to have accept that the tenancy ends on the effective date of the notice and he must vacate.

The landlord served a one month Notice to End Tenancy on the Tenant on January 12, 2018. The tenant took the steps to file an Application for Dispute Resolution but failed

to complete the process. A search of the Residential Tenancy Branch records indicates this application was abandoned.

Section 47(5) of the Act provides as follows:

47(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 tenant failed to file an Application for Dispute Resolution and he is conclusively deemed to have accepted the end of the tenancy. The Notice incorrectly set an end of tenancy date for February 12, 2018. The law requires that the end of tenancy date be the last day of the rental payment period. However, the Act self corrects the end of tenancy date to February 28, 2018.

#### Early Termination of the Tenancy:

Section 56 of the Residential Tenancy Act provides that a landlord may request an Order ending the tenancy that is earlier than the tenancy would end if notice to end were given under section 47 and an order of possession if

56(2) (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
  - (A) has caused or is likely to cause damage to the landlord's property,
  - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and  
(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

I determined there are sufficient grounds to end the tenancy on the basis that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or put the landlord's property at significant risk. The evidence indicates significant garbage and fecal material on the grounds surrounding the rental unit. The landlord testified it is dog feces. The tenant testified the septic system is broken. I determined there is a significant health risk here and I determined it was appropriate to grant an early end to the tenancy and an Order of Possession.

Order of Possession:

I determined the landlord was entitled to an Order for Possession. Accordingly, I granted the landlord an Order for Possession effective February 28, 2018.

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: February 20, 2018

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Residential Tenancy Branch