



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated January 12, 2018
- b. A monetary order in the sum of \$2000.
- c. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. An order to suspend or set conditions on the landlord's right to enter the rental unit.

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 one month Notice to End Tenancy was served on the Tenant on January 12, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord January 17, 2018. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated January 12, 2018?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. Whether the tenant is entitled an order to suspend or set conditions on the landlord's right to end the rental unit.

Background and Evidence:

The tenancy began approximately one year ago. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 and a pet damage deposit of \$600 at the start of the tenancy. The tenant lives in the upstairs portion. The landlord lives in the basement.

The landlord seeks to end the tenancy based on the following evidence:

- The landlord testified the tenant assaulted him. After paying the rent for January the parties got into an altercation. The tenant then followed the landlord into the landlord's rental unit stole the cash portion of the rent that was paid (approximately \$900). The police were called. In the presence of the police officer the tenant threatened to cause bodily harm to him.
- The landlord testified the tenant failed to pay the rent for January 2018 (\$900 is owed). As well the tenant has not paid the rent for February (\$1200 is owed) and March (\$1200 is owed). The tenant also owes for gas and hydro.

The tenant gave the following evidence:

- He disputes the evidence of the landlord. He testified the landlord came into his rental unit without asking. He took the thermostat off the wall and that has not been replaced. The tenant admits he got into a "tiff" with the landlord and the police were called. However he denies the evidence of the assault and threats.
- The tenant disputes retrieving the cash portion of the rent. He testified the rent for February was paid by Ministry cheques. He acknowledged he has not paid the rent for March.
- The tenant testified the rental unit is an illegal suite. He has been without heat and hot water since the date of the incident.
- The tenant further testified the landlord has failed to take steps to remove belongings of other tenants from the basement suite. As a result he has been forced to leave his couch and love seat outside. Those items are now damaged. He purchased them a couple of years ago for \$1500.

The landlord responded by testifying there is heat and hot water in the entire building. The tenant does not have a thermostat to control the heat but this does not mean there

is no heat. He has always asked for permission before he entered the tenant's rental unit.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
  - ...
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
  - ...
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Analysis:

Unfortunately the evidence presented by both parties was not satisfactory. The landlord relies on a police report but failed to upload the police report. The tenant alleges damage to his belongings but failed to present sufficient evidence of the damage and the amount of his loss.

The landlord has the burden of proof to present sufficient evidence to establish sufficient cause to end the tenancy on a balance of probabilities. After carefully considering all of the evidence I determined the landlord has he established sufficient cause to end the tenancy. I determined the tenant followed the landlord into the landlord's rental unit and he assaulted and threatened the landlord. The landlord's conduct leading up to this may have been provocative. However, there is no justification for what the tenant has done. It is apparent from the testimony presented by both parties that the relationship is acrimonious.

Determination and Orders:

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy. The tenant testified he is looking after his disabled brother and they have not found alternative accommodation. After considering all of the evidence I order that the tenancy shall end on March 31, 2018.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for

Possession. As a result I granted the landlord an Order for Possession effective March 31, 2018. .

Tenant's Application for a Monetary Order:

I am satisfied based on the evidence presented that the landlord removed the thermostat and has not taken steps to repair or replace it. I am satisfied there has been a reduction of the value of the tenancy because of this. I do not accept the submission of the tenant that he has been without heat and hot water since the incident. I determined the tenant is entitled to compensation in the sum of \$300 for the removal of the thermostat and disruption caused by the inability to control the heat.

I accept the submission of the tenant that it is the landlord's duty to remove the belongings of previous tenants. The tenant claimed damages in the sum of \$2000 for the damage to his couch and loveseat. However, he failed to present evidence that would prove they are a total loss and the value of the loss. I determined the tenants are entitled to nominal damages in the sum of \$50 per items for a total of \$100.

**Director's orders: fees and monetary orders**

**72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

The tenant has admitted he has not paid the rent for March 2018 and the sum of \$1200 is owed. I determined the tenant has established a monetary claim against the landlord in the sum of \$400. I ordered pursuant to section 72(2) that this sum be deducted from the rent due for March 2018 leaving a balance owing for March of \$800.

I have not made a determination as to whether rent is owed for January and February. The evidence presented by the parties was not sufficient and it was not necessary for me to make such a determination. The parties have the right to file a claim to deal with whether the rent has been paid for those months. .

Application of the Tenant for an Order that the landlord provide services or facilities required by the tenancy agreement or law:

I determined it was not appropriate to make an order that the landlord provide services or facilities required by the tenancy agreement or law as the tenancy is coming to an end.

Application of the Tenant for an Order suspending or setting conditions on the landlord's right to enter the rental unit:

Section 29 of the Residential Tenancy Act provides as follows:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I order that the landlord comply with the Act.

Conclusion:

I dismissed the tenant's application to cancel the one month Notice to End Tenancy. I granted an Order of Possession effective March 31, 2018. I determined the Tenant has

established a monetary order against the landlord in the sum of \$400 such sum may be applied to the rent for March leaving a balance owing of \$800.

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 final and binding on the parties.**

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: March 14, 2018

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Residential Tenancy Branch