



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL PRPERTIES & RALPH HANNEKE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, ERP, MNDC, MT, OLC, RP, RR

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for emergency and general repairs, for more time to make the application, for the landlord to comply with the Act, regulations and tenancy agreement, for a rent reduction and for compensation for loss or damage under the Act, regulations and tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery to the Landlord's mail box on April 1, 2018. The Tenant's service of documents does not comply with s. 89 of the Act as the Tenant received the hearing package on March 13, 2018 and the Act requires service of the application within 3 days of receiving the hearing package. The Landlord said he received the Tenant's hearing package and the hearing continued.

### Issues(s) to be Decided

Tenant:

1. Is the Tenant entitled to an order cancelling the Notice to End Tenancy?
2. Are there repairs to be completed?
3. Is the Tenant entitled to more time to make the application?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?
5. Is the Tenant entitled to a rent reduction?
6. Is the Tenant entitled to compensation for loss of damage and if so how much?

Preliminary matter

The Tenant requested more time to make the application as the Tenant said he has a brain injury and he did not understand the time requirements to make the application. Further the Tenant said he does not have any support people working with him at the present time so no one was available to assist him.

The Tenant did provide a reasonable amount of evidence to support some of his claims and the Tenant presented his case in an organized and thoughtful manner at the hearing. As well the Tenant provided a personal statement that he was assaulted and was injured in June 2017. The Tenant submitted a photograph of a hospital ID bracelet in his evidence. The Tenant said this is his proof that he has a brain injury.

Page two the One Month Notice to End Tenancy for Cause says in the area titled Information to Tenants that a tenant may dispute the One Month Notice to End Tenancy with in 10 days of receiving it or if the Tenant has proof of serious and compelling evidence the Arbitrator may grant more time for the Tenant for make the application. I accept the Tenant may have a health issues but there is no corroborative evidence to **prove** that the Tenant was unable to file his application on time or seek out assistance to respond to the Notice to End Tenancy. Further the Tenant was well organized and thoughtful during the hearing. Consequently I dismiss the Tenant's request for more time to make the application due to a lack of proof that the Tenant was unable to understand the Notice to End Tenancy or to file the application with in the time requirements of 10 days after receiving the Notice to End Tenancy.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. The effective vacancy date on the one Month Notice to End Tenancy for Cause dated February 22, 2018 is March 31, 2018.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served in person, or on February 23, 2018. Consequently, the Tenant would have had to apply to dispute the Notice by March 5, 2018.

I find that the Tenant applied to dispute the Notice to End Tenancy on March 13, 2018 which is 8 days after the time limit to apply for dispute resolution. Consequently, I dismiss the Tenant's request for more time to make the application and to cancel the One Month Notice to End Tenancy for Cause dated February 22, 2018 due to late filing. Further pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

In addition as the tenancy is ending I dismiss the Tenant's claims that relate to the tenancy continuing. These claims include a request for emergency and general repairs, for a rent reduction and for the Landlord to comply with the Act, regulations and tenancy agreement.

The hearing continued to hear the Tenant's monetary claim.

### Background and Evidence

This tenancy started on September 1, 2017 as a month to month tenancy. Rent is \$870.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$435.00 at the start of the tenancy.

The Tenant agreed that the rent for his unit is \$870.00. The Tenant continued to say the ministry pays \$700.00 per month and he pays the balance of \$170.00 each month. The Tenant said his monetary claim is for his portion of the rent to be returned in the amount of 8 month times \$170.00 which equals \$1,360.00. As well the Tenant said he has not paid the \$170.00 for April, 2018, which increases the monetary claim to \$1,530.00. The Tenant said the reason for his monetary claim is the Landlord has not dealt with a bug and bed bug infestation in his rental unit the, there is a lack of security in the building that the Landlord has ignored, there is repairs including plumbing that the Landlord has not fixed and the Landlord has been harassing the Tenant for many months. The Tenant said when he asked the Landlord to fix something the Landlord would reply by saying "If you don't like it here move out, poor baby." The Tenant said the Landlord has also harassed him with multiple 10 Day Notice to End Tenancy for Unpaid rent. The Tenant said he has had the rent, but the Landlord does not come around to pick it up. Then the Landlord gives the Tenant a Notice to End Tenancy for Unpaid Rent. The Tenant said this is not fair and it is causing his mental illness to get worse. The Tenant said he should be compensated for the Landlord's actions as it has devalued his tenancy.

The Landlord said the Tenant is not telling the truth. The Landlord continued to say the Tenant has changed the locks on the door of his unit and has not given the Landlord a key. Further the Landlord said the Tenant has not allowed the pest control into his room or the plumber to fix the bathroom issue. The Landlord continued to say he understands the Tenant has health issues, but he is causing his own problems by not giving the Landlord a key to the unit and not allowing access. Further the Landlord said it is the Tenant's responsibility to pay the rent on time. The Landlord said he goes through the building on the first day of each month and if someone is out they put their rent in the deposit box at the office. The Landlord said the Tenant is late and sometimes does not put the rent in the deposit box so the Landlord gives him a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said this is how it works.

The Landlord called A.B. as a witness. Witness A.B. gave affirmed testimony that the Tenant dismantled the fire warning system in the building and as a result put the building at significant risk.

The Tenant denied tampering with the alarm system but did say he removed magnets from the lock mechanism that he believes were put on the locks to give access to squatters and people not living in the building. The Tenant said he did not tamper with the fire alarm system.

The Landlord called a second Witness R.M. Witness R.M gave affirmed testimony that the Tenant's dog barks most of the time when the Tenant is not at home. As well witness R.M. said the pest control came around 3 times and each time the Tenant did not give them access to his rental unit.

The Tenant said his dog is a guard dog but it is not vicious and he does not believe it barks when he is out. The Tenant agreed he did not give access to the pest control worker as he has been spraying himself and this appears to be controlling the bug issue in his unit.

The Tenant said in closing he thought this unit would be a good place for him to heal, but the Landlord's increasing harassment has only worsened his mental state. The Tenant said there are repair issues, security issues, insect issues and harassment that have all devalued his tenancy. The Tenant requested compensation for the actions of the Landlord.

The Landlord said in closing he understands the Tenant has health issues, but the Tenant's claims are false. The Landlord said they dealt with the squatters through the Residential Tenancy Branch and that took time, but it was out of his control. With respect to the insect issues the Landlord said they have pest control available and the Tenant will not allow them into his unit. Again the Landlord said he cannot control this. Further the Landlord said the Tenant is difficult to deal with about entry into the unit for repairs and the Landlord does not have a key so it is difficult to make repairs in a timely manner. Finally the Landlord said he has not harassed the Tenant with 10 Day Notice to End Tenancy for Unpaid Rent. If the rent is not paid his tenants get a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said the Tenant has been late with the rent 6 months out of 8 months. The Landlord said he wants to end the tenancy as soon as possible.

### Analysis

I accept the testimony of both parties that the Tenant has changed the locks on the rental unit and has not given the Landlord a key to the new locks. Further, I find that the Tenant has denied access to the pest control agents for pest control and the plumber for bathroom repairs. Consequently I find the Tenant has compromised his claims by not allowing the Landlord to correct the issues that Tenant is making claims about.

Further, I find the Tenant has not established grounds to prove the Landlord has devalued the tenancy by the actions the Landlord has taken. The Landlord provided plumbing services to the building on an ongoing basis and pest control services to the building on three occasions, which the Tenant has declined. Further the Landlord dealt with the security issue of the squatters in a lawful and proper way. The Tenant says that the Landlord harassed him with 10 Day Notices for Unpaid Rent and the Landlord said he issued 10 Day Notices because the rent was unpaid. I accept the Landlord's testimony in this situation. Consequently, I find the Tenant has not established grounds to prove the Landlord has devalued the tenancy. I dismiss the Tenant's monetary claim for \$1,530.00 without leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia

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 17, 2018

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Residential Tenancy Branch