



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, MT, ER, PSF

### Introduction

The tenants apply to cancel a ten day Notice to End Tenancy for unpaid rent dated March 18, 2018 and for more time to do so. They also seek an order for emergency repairs in the nature of insulating the dwelling and for the landlord to provide a service or facility, namely insulation.

It is apparent that Mr. R.L., who is Ms. H.C.L.'s fourteen year old son, is not a tenant of the landlord but merely an occupant under his mother's tenancy.

Rule 2.3 of the Rules of Procedure provides that an applicant's claims must be related to each other. In this case the primary claim, for which an expedited hearing date has been given, is the tenant's request to cancel the Notice. In light of the fact that the urgency of the tenant's other claims has now subsided with the passage of winter and that the tenant's evidence in support of her other claims was only served on the landlord four days before the hearing, I exercise my discretion and dismiss all claims but for the tenant's challenge to the Notice, with leave for the tenant 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

Is the tenant entitled to an extension of time to make her application? Is the ten day Notice a proper Notice resulting in the end of this tenancy?

### Background and Evidence

The rental unit is a composition of two rural cabins, a bathhouse containing a bathtub, an outhouse, a woodshed and a goat barn. There is no municipal water. There is no power nor is there any internet service. Heat is provided by wood stoves.

The tenant has been living in the one of the cabins since about 2015 and, in June 2017 signed a handwritten tenancy agreement with the landlord for the composite rental unit "as is" for a fixed term of five years at a rent of \$570.00 per month..

The tenant received the Notice in question on March 18. The Notice, paraphrasing s. 46 of the *Residential Tenancy Act* (the "*Act*"), requires that unless she either pays the amount demanded in the Notice or make an application to cancel it within five days after receipt, she is conclusively deemed to have accepted the ending of the tenancy.

The tenant made an application and obtained a fee waiver on March 28, outside the five day period.

The effective date given in the Notice was March 28.

The hearing was divided into two parts. The first part dealt with the tenant's request for an extension of time to make her application. Without such an extension the tenant would be out of time to challenge the Notice and this tenancy would end as a result of the Notice.

The tenant testifies about the difficulties she encountered in her attempt to make her application, including lack of modern communications methods and heavy snow preventing her from getting to town. As well, she confused the Service BC office with the Service Canada office causing further delay. The landlord opposes any extension of time. He has not re-rented the premises.

On this evidence it was decided that the tenant was met with extraordinary circumstances and that her request for an extension of time for her to make her application was granted.

The second part of the hearing dealt with the validity and effect of the Notice.

The landlord's assistant Ms. W. testifies that the tenant was \$960.00 short in her rent for the months of January, February and March 2018. She says the tenant paid no rent for the months of June to November 2017 but paid \$570.00 in December.

The tenant does not dispute that as of the March 18 Notice she owed \$960.00 for rent from January, February and March 2018 but says she paid rent in 2017 and paid by cash to the landlord for which she did not acquire a receipt.

The landlord was called on to respond to the assertion of cash payment. He testifies that the tenant did pay him cash for rent, perhaps in November or "late Fall." He says he recalls the tenant spent \$280.00 for tires but wasn't sure if that money came out of rent money.

Analysis

The tenant owed the landlord \$960.00 for unpaid rent as of March 18, 2018, the date of the Notice. The Notice claims that the tenant owed \$1240.00. I have little confidence in the landlord's accounting of anything more than the \$960.00. Not even a basic ledger record was produced.

The testimony of the landlord and his assistance is contradictory about cash payments made before 2018 and I have little faith in either's calculation of what more than \$960.00 the tenant might owe.

If a landlord claims more than what is owed in a ten day Notice, the Notice cannot be valid.

I conclude that the landlord has not established that the tenant owes at least the amount in the Notice and I hereby cancel it.

Conclusion

The tenant's application to cancel the Notice is allowed. The remainder of her claim is dismissed with leave to reapply.

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 04, 2018

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Residential Tenancy Branch