



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR LRE PSF RR

### **Introduction:**

Both parties attended the hearing and gave sworn or affirmed testimony. The landlord said they served the tenant personally on April 16, 2018 with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 16 to be effective April 26, 2018. The tenant said she served the landlord with their Application for Dispute dated April 18, 2018 personally with a police escort. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies:

- (a) pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy;
- (b) to set limits on the landlord's entry into the unit pursuant to section 29;
- (c) to obtain facilities pursuant to section 27; and
- (d) for compensation or a rent rebate for facilities not provided.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. They agreed the tenancy began on January 1, 2017, rent is \$1000 a month and a security deposit of \$500 was paid. When the Notice to End Tenancy was served, the tenant owed \$600 for rent for April 2018; she paid it in cash on April 25, 2018 but has paid no rent for June 2018. She said she is in the process of moving but has problems with people being available to help her. She said she had asked the landlord to apply the security deposit to the rent for June.

The tenant also claims \$1500 compensation (\$100 a month) for lack of heat and hot water. She explained that the heat was erratic and she had no control over it. In May her unit was so hot. When she complained, the wife of the landlord told her to turn it off so she did. Then it was fine. She said the furnace makes a funny noise and has a smell so it makes her nervous so she kept warm with a portable heater. She had

pneumonia and her birds died and she believes this was due to the heating problem. She also said she had insufficient hot water. She notes she made verbal complaints and maybe one written one but she provided no copy in evidence.

She also said she believes the landlord was entering her unit without notice for she found a feather pulled off her bird. She said the vet had told her that would not happen naturally, it must have been pulled off.

The landlord responded to the tenant's allegations. He said there is a central heating system for the home. He and his wife and children live upstairs and they provided adequate heat. He said the tenant in the other unit has never complained. In addition, he said the tenant has baseboard heaters but she has many bags of items stored in her unit, some up to the ceiling which may cause inadequate circulation. He notes his response to the hot water allegation is the same; in fact this tenant leaves at 7:00 a.m. and has first use of the hot water so there is plenty for her but sometimes not much left for his own family who use it last in the morning. He said they have never entered the tenant's unit without notice; they don't have a key.

The tenant responded by saying she put bags on the floor to keep it warmer and the other tenant had complained to her and one had left due to the heat problem.

**Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. Section 26 of the Act provides that a tenant must pay rent on time, whether or not the landlord fulfills their obligations under the Act. I find the tenant did not pay the outstanding rent for April 2018 within 5 days although she disputed the Notice in time. I find none of her complaints are valid reasons to withhold her rent. I therefore dismiss her application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective two days from service as he requested.

Regarding the tenant's claims, I find insufficient evidence to support her claims. Although she complained of lack of heat, she provided no documentary evidence to show she ever complained of this in writing to the landlord. I find the landlord's evidence credible that the house is on one heating and hot water system with his family upstairs, this tenant and another tenant. He stated the other tenant had never complained and this tenant also had baseboard heaters to supplement the system. He

noted she may have had a circulation problem because of her habit of storing many bags of clothing etc. which sometimes reached the ceiling. Although the tenant complained of illegal entry, the landlord also denied this. I find the tenant has failed to satisfy the onus of proving her claims. I dismiss her claims without leave to reapply.

**Conclusion:**

I grant the landlord an Order for Possession effective two days from service. 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. I dismiss the tenant's application; her filing fee was waived

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: June 19, 2018

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Residential Tenancy Branch