



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, PSF, AAT, RP

### Introduction

On April 17, 2018, the Tenant submitted an Application for Dispute Resolution under the Residential tenancy Act ("the Act") asking for more time to make an application to cancel a notice to end tenancy. The Tenant is also seeking the following relief:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.
- For the Landlord to provide services and facilities required by the tenancy agreement or law.
- To dispute a rent increase that is above the amount allowed by law.
- For the Landlord to allow access to the unit or site.
- For repairs to the unit or property.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Applicant identified that the spelling of his name in his application is incorrect. The Tenant provided the correct spelling of his name and asked that his application be amended. The Tenant's application was amended accordingly.

The Landlord submitted that the *Act* may not apply to this living arrangement because the Tenant only rents a room in the house and the Landlord shares the rental unit, including the

kitchen and bathroom, with the Tenant. The Landlord submitted that he rents the property from the owner.

In response, the Tenant submitted that he believes he is a Tenant and that the *Act* applies. He submitted that he occupies one room but has use of the other areas. The Tenant submitted that the Landlord has entered the house for his own use at times.

Section 4 of the *Act* provides that the *Act* does not apply to living accommodation in which the Tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I find that the parties have entered into a tenancy and that the rights and responsibilities of the *Act* apply to the parties. I find that the Landlord is not the owner of the property and therefore the Tenant is not sharing a kitchen or bathroom with the owner of the accommodation.

The parties were offered an opportunity to settle the matter under section 63 of the *Act*; however, a settlement agreement could not be reached.

#### Issue to be Decided

- Are there exceptional circumstances present, to allow the Tenant more time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began in January 10, 2018. The Tenant rents a room in a 1200 square foot house.

The parties disagreed on the amount of rent that is due each month. The Tenant testified that he pays \$600.00 each month; however he submitted that only \$500.00 is for rent and the remainder is for hydro. The Tenant did not pay a security deposit or pet damage deposit to the Landlord.

The Landlord testified that the rent is \$550.00 each month and the Tenant agreed to pay an additional \$50.00 up front for hydro, and to cover any additional hydro costs beyond the \$50.00.

There is no written tenancy agreement.

The Landlord provided copies of emails sent between the parties. An email from the Landlord dated March 31, 2018 indicates that the rent was \$550.00. An email from the Tenant dated April 12, 2018, indicates that the parties agreed the rent would only be \$500.00 for two months and since it is the third month the Tenant is paying the additional \$50.00.

In response to the question of how much rent the Tenant paid the Landlord, the Tenant testified that he paid 500.00 for January and \$500.00 for February, and paid \$550.00 for March 2018.

The Landlord testified that he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 1, 2018. The 10 Day Notice shows an effective date of April 11, 2018.

The 10 Day Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has 5 days to pay the rent or utilities or file an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 5 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Tenant testified that he received the 10 Day Notice on April 1, 2018. The Tenant filed an application for dispute resolution on April 17, 2018. The Tenant's application was filed 11 days late.

The Tenant submitted that he did not dispute the 10 Day Notice earlier because of the cost of the filing fee. He submitted that he is on social service.

### Analysis

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 1, 2018.

The Tenant had 5 days; until April 6, 2018, to dispute the 10 Day Notice. The Tenant applied to dispute the 10 Day Notice on April 17, 2018.

I find that the Tenant's application requesting more time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2018, was made beyond the effective date of the 10 Day Notice. Pursuant to section 66 of the Act the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

After considering the evidence before me, I am unable to accept the Tenant's application to dispute the 10 Day Notice. I dismiss the Tenant's request for more time to make an application

to dispute the 1 Month Notice. The Tenant's Application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

Under section 55 of the Act, when a Tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content. The Landlord is entitled to an order of possession effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

I dismiss the Tenant's request for more time to make an application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 1, 2018.

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenancy has ended, the Tenant's application is dismissed in its entirety.

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 20, 2018

---

Residential Tenancy Branch