



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MT CNC OLC

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated May 07, 2019 with a stated effective date of June 06, 2019. The tenant testified they received the Notice and filed for dispute resolution on May 16, 2019, which was deemed abandoned 3 days later for failure to establish payment or settlement of the filing fee. The tenant applied again to dispute the Notice May 22, 2019 satisfying the filing fee via approval to waive the fee. The tenant further seeks for the landlord to be ordered to comply with the Act or tenancy agreement.

#### *Preliminary matters*

The tenant's application establishes that they filed to dispute the Notice later than prescribed by the Act. The tenant explained that they failed to tick a box to request waiver of the filing fee, although they testified having intention of doing so as they are on income assistance. Following the long weekend of the month they were informed their application was deemed abandoned and therefore immediately made a new application 4 days after the mandated filing period. I found that the tenant originally filed on time, had intention to satisfy the filing fee requirements however failed to populate a form requesting for its waiver. I find that the tenant immediately re-applied upon being informed their original application was deemed abandoned. As a result, I find the tenant has provided reasons of exceptional circumstances pursuant to Section 60 of the Act allowing me to accept their application to dispute the Notice to End.

I accept the tenant's evidence that despite the landlord having been personally served with the application for dispute resolution and notice of hearing on May 27, 2019, inclusive of the tenant's evidence in accordance with Sections 89 and 88 of the Act, the landlord did not participate in the conference call hearing. The conference bridge line remained open for the duration of the hearing and was monitored throughout this time. The only party to call into the hearing was the applicant tenant. The tenant was given full opportunity to be heard.

### **Issue(s) to be Decided**

- Is the notice to end tenancy valid pursuant to Section 52 of the Act?
- Should the Notice to End dated May 07, 2019 be set aside?

- Should the landlord be Ordered to comply with the Act?

### **Background and Evidence**

In this type of application, the applicant tenant is disputing the landlord's Notice in its entirety, and this hearing was primarily convened to determine the validity of the Notice. The landlord did not appear in the hearing to advance or defend their reasons for issuing the Notice to End for Cause.

The tenant is also seeking for the landlord to be ordered to comply with Section 29 of the Act following a series of unannounced visits and inspections by the landlord which the tenant testified has left them feeling intruded upon and their right to quiet enjoyment abridged by the "surprise visits".

The tenant is also seeking for the landlord to be ordered to comply with Section 27(1) of the Act following a prolonged absence of heat in the rental unit by the primary heating system fueled by *fuel oil*. The tenant testified that as a result they have had to compensate the lack of heat from the furnace via using electrical heaters, which increased the electrical usage and furthering conflict with the landlord respecting the cost overages.

The tenant provided the contractual tenancy agreement dated November 01, 2018 which states that *heat* and *electricity* are included as part of the rent.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

In this type of proceeding the burden of proof rests with the landlord to provide evidence the Notice was validly issued for the stated reason(s). The tenant disputes the Notice to End. I found the landlord was served in accordance with the Act and was duly notified of this hearing and the means to attend the hearing. The landlord did not appear to defend their notice or present evidence to support ending the tenancy. As a result, I find I have not been presented evidence sufficient to determine that the Notice to End was validly issued for the reasons stated on the Notice. I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, I must set aside the Notice to End dated May 07, 2019. The landlord's notice to End is hereby **cancelled, and of no effect**. The tenancy continues in accordance with the tenancy agreement.

In respect to the other matters of the application, I find that the tenancy agreement clearly states that heat is included in the rent which I find is a material term of the tenancy agreement. I accept the tenant's undisputed testimony of an absence of fuel oil for the primary heating system has resulted in an absence of heat. As a result,

**I Order** the landlord to comply with the **Tenancy Agreement and Section 27(1)** of the Act. **I Order** the landlord must provide heat to the rental unit, via the primary heating system, or by another method, and any of which at no additional cost to the tenant.

If the landlord fails to comply with the above Order the tenant is at liberty to apply for remedial compensation.

In respect to the tenant's undisputed evidence regarding the landlord's unannounced visits to the residential property and the tenant,

**I Order** the landlord to comply with **subsection 1 of Section 29** [Section 29(1)] of the Act strictly and in its entirety, forthwith.

If the landlord fails to comply with the above Order the tenant is at liberty to apply for remedial compensation.

### **Conclusion**

The tenant's application is granted. The landlord's Notice to End has been set aside. The landlord has been Ordered to comply with the Tenancy Agreement and Sections 27 and 29 of the Act.

**This Decision is final and binding.**

*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: July 10, 2019

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Residential Tenancy Branch