

## **DECISION**

**Dispute Codes**      CNR, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application to cancel a Notice to End Tenancy for unpaid rent or utilities. The tenant also applied for an order extending the time within which to file this application. The parties each gave evidence, as well as a witness for the tenant.

### **Issues to be Decided**

Should the tenant's application to extend the time within which to file this application be granted?

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

### **Background and Evidence**

This month-to-month tenancy began in August, 2000, with a different landlord. The present landlord took over in 2002. Rent in the amount of \$775.00 is due on the 1<sup>st</sup> of each month, and at the outset of the tenancy, the tenant paid a security deposit in the amount of \$387.50. Evidence was also heard that the security deposit went toward a month's rent sometime in 2002 or when the current landlord took over.

The landlord served the tenant on February 9, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of that notice was not entered into evidence, but the parties agree that the notice stated that \$1,785.00 was outstanding and due January 30, 2010. The tenant testified that the landlord had an ulterior motive for issuing the Notice to End Tenancy, and she feels he wants to sell the building or raise the rent for another renter.

Both parties allege that the other party has breached the *Residential Tenancy Act*, or tenancy agreement, by not keeping the unit up to a state of health, cleanliness and sanitary standards, and a state of decoration and repair that meet the health, safety and housing standards required by law.

The parties struggled with their evidence about what payments were made and what payments were missed, or only partially paid. The tenant testified that she always paid in cash and when she asked for a receipt, the landlord was always in a hurry, and often she did not get a receipt. She also provided a copy of a handwritten receipt that was written on the back of an envelope after insisting on a receipt.

The landlord also gave evidence that he had loaned the tenant money, for which I make no orders.

The following spreadsheet represents the best efforts of the landlord for rent owed and paid during 2008, 2009 and 2010:

DUE DATE	AMOUNT DUE	AMOUNT PAID	DIFFERENCE	BALANCE
January, 2008	775.00	600.00	175.00	175.00
February, 2008	775.00	675.00	100.00	275.00
March, 2008	775.00	400.00	375.00	650.00
April, 2008	775.00	1,000.00	(225.00)	425.00
May, 2008	775.00	700.00	75.00	500.00
June, 2008	775.00	675.00	100.00	600.00
July, 2008	775.00	900.00	(125.00)	475.00
August, 2008	775.00	600.00	175.00	650.00
September, 2008	775.00	775.00	0.00	650.00
October, 2008	775.00	775.00	0.00	650.00
November, 2008	775.00	Unknown	0.00	650.00
December, 2008	775.00	775.00	0.00	650.00
January, 2009	775.00	775.00	0.00	650.00

February, 2009	775.00	Unknown	0.00	650.00
March, 2009	775.00	700.00	75.00	725.00
April, 2009	775.00	775.00	0.00	725.00
May, 2009	775.00	775.00	0.00	725.00
June, 2009	775.00	775.00	0.00	725.00
July, 2009	775.00	700.00	75.00	800.00
August, 2009	775.00	775.00	0.00	800.00
September, 2009	775.00	500.00	275.00	1,075.00
October, 2009	775.00	775.00	0.00	1,075.00
November, 2009	775.00	750.00	0.00	1,075.00
December, 2009	775.00	1,575.00	(800.00)	275.00
January, 2010	775.00	775.00	0.00	275.00
February, 2010	775.00	775.00	0.00	275.00
March, 2010	775.00	775.00	0.00	275.00

In the above spreadsheet, where the landlord has failed to prove that rent was not paid in full, the tenant will get the benefit of the doubt.

### **Analysis**

The landlord has the burden of proving what rent was paid and what rent was not paid. In the circumstances, I am unable to make a reasonable determination that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has the correct amounts or dates, nor am I able to determine conclusively what rent is actually overdue. I find that the spreadsheet above fairly represents what is due to the landlord for outstanding rent.

The *Residential Tenancy Act* states that rent must be paid when it is due, and the landlord must provide a receipt whenever rent is paid in cash. I would urge both parties to continue with a spreadsheet similar to the one above and to retain receipts, to keep track of payments and when they are made.

## **Conclusion**

The tenant's application to extend the time within which to file this application is hereby granted.

The landlord's notice to end tenancy is hereby cancelled.

I hereby order that both parties comply with the *Act*:

- The tenant must pay rent when it is due, pursuant to Section 26(1);
- The landlord is required to give a receipt for rent paid in cash, pursuant to Section 26(2);
- The landlord is required to maintain the property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by a tenant, pursuant to Section 32;
- The tenant is required to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and property, and must repair damage caused by the actions or neglect of the tenant or guests, pursuant to Section 32;
- The landlord may only enter the rented unit upon giving 24 hours written notice, and not more than 30 days notice, which notice must contain the reason for the entry, which must be reasonable, and the date and time of the entry, between the hours of 8 a.m. and 9 p.m., except in the case of an emergency or with the consent of the tenant, pursuant to Section 29(1);
- The landlord is entitled to inspect the unit every 30 days, and must give the tenant at least 24 hours notice in writing that sets out the purpose for entering the unit, which must be reasonable, and the date and time of the entry, pursuant to Section 29(2);
- The tenant must not restrict access to the unit by the landlord if the landlord is in compliance with Section 29.

I am attaching a Fact Sheet prepared by the Residential Tenancy Branch for the benefit of each party along with a copy of this decision, and a booklet entitled, "A Guide for Landlords and Tenants in 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: March 15, 2010.

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Dispute Resolution Officer