



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, CNR, RP,PSF, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for cause and for unpaid rent, to make repairs to the unit, to provide services or facilities required by law and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail October 12, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Both the Landlord and the Tenant had translators present to assist them in the conference call hearing.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Is the Tenant entitled to make repairs to the property?
3. Is the Tenant entitled to services or facilities required by law?

### Background and Evidence

This tenancy started in April 2009 with the brother of the Tenant and the Tenant took over the Tenancy in February, 2010. The tenancy is verbal and is a month to month tenancy. Rent is \$350.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant said her brother paid a security deposit of \$250.00 in April, 2009.

The Landlord said this was a temporary tenancy as the Landlord was given a notice from the City April 4, 2010 saying that he could only rent one unit in the building and the kitchen facilities in the basement (second) unit would have to be removed. The Landlord said he gave the Tenant a copy of the notice to shut the second rental unit down on April 10, 2010.

The Landlord continued to say that the Tenant has not paid the February, 2010 rent of \$350.00, the March, 2010 rent of \$350.00 and the August, 2010 rent of \$350.00. The Landlord said the Tenant has paid the utilities that were outstanding prior to the hearing date.

The Tenant said that they moved into the unit April 1, 2010, but had the brother's belongings and some of their belongings were in the unit during in February and March, 2010. The Tenant also said she had stayed in the unit some of the time in February and March, 2010. The Tenant said on April 10, 2010 the Landlord said he would fix the plumbing issues and that they could move in to the unit and rent would be \$350.00 plus a share of the utilities. The Tenant said after they moved in they had continuous problems with the toilet and the plumbing. She said the Landlord has made repairs to the plumbing and the toilet on September 14, 2010 which has fixed the flushing problem, but the unit is uninhabitable as there is a strong odour in it. The Tenant said she has included a list of monetary losses that she incurred when the toilet flooded in the unit, but she has not applied for monetary compensation in this application. The Tenant said she understands that she can apply for monetary compensation in a future application if she decides to do that.

The Tenant said she wants to continue to live in the unit and she wants the plumbing problems repairs and the unit cleaned.

The Landlord said he is requesting an Order of Possession as he has served a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and the rent is not paid. As well the Landlord said he has served a 1Month Notice to End Tenancy for Cause. The causes include a government order to close the rental unit down, late payments by the Tenant and adversely affecting other tenants in the building.

## Analysis

Section 26 (1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As both the tenant and the Landlord agree that there is unpaid rent. The Landlord says that rent is unpaid for February, March and August, 2010 and the Tenant says she did not pay the rent for August, 2010 and the Tenant does not have the right under this Act to deduct all or a portion of the rent; I find the Tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent is dismissed without leave to reapply.

Section 47 (1) (k) says a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

As both the Landlord and the Tenant said that the Landlord has a Notice from the City to stop renting the second rental unit in the building and to remove the kitchen; I find the Tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed without leave to reapply.

55 (1) says if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

As the Landlord made an oral request for an Order of Possession during the hearing and the Tenant's applications to cancel the Notices to End Tenancy are dismissed; I grant an Order of Possession to the Landlord effective 2 days after serving a copy of the Notice on the Tenant. The Order of Possession must be served in one of the ways stipulated by the Act and may be enforced by the Supreme Court of British Columbia.

As the Tenant was unsuccessful in her application to cancel the Notices to End Tenancy; I dismiss the Tenant's application for repairs to the unit and to provide services and facilities as well as the recovery of the filing fee for this proceeding.

## Conclusion



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The Tenant's application to cancel the Notices to End Tenancy, to repair the unit and have the Landlord provide services and facilities are dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of 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*.

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