



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR

### **Introduction**

This Hearing was convened to consider the Tenants' application to cancel a Notice to End Tenancy for Unpaid rent.

The parties gave affirmed testimony at the Hearing.

The Landlord acknowledged receipt of the Notice of Hearing documents by registered mail sent July 19, 2012. He also acknowledged receipt of the Tenants' three evidence packages on July 25, 2012.

The Tenant acknowledged receipt of the Landlord's documentary evidence on July 26, 2012.

### **Preliminary Matters**

The Tenants' application named the Landlord's agent as respondent. The Tenants' application was amended to reflect the name of the corporate Landlord.

### **Issues to be Decided**

- Should the Notice to End Tenancy be cancelled?

### **Background and Evidence**

The Tenant testified that the Tenants owe rent, but not the amount the Landlord alleges on the Notice to End Tenancy. The Tenant stated that unpaid rent is \$2,700.00.

The Landlord's agent stated that he was willing to agree that the Tenants owe \$2,700.00 in unpaid rent up to July 31, 2012. He stated that monthly rent is \$825.00 and the Tenants have not paid rent for August, 2012, either.

The Tenant stated that the Tenants are in the process of moving and asked if the Landlord could give them more time. The Landlord asked for an Order of Possession effective August 10, 2012.

### **Analysis**

Section 26(1) of the Act states:

**Rules about payment and non-payment of rent**

- 26** (1) 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.

Section 46 of the Act states:

**Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.
- (6) If
- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
  - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the Tenants did not pay rent when it was due, or within 5 days after receipt of the Notice. The Tenant did identify any right under the Act to deduct rent and therefore **the Tenants' application to cancel the Notice is dismissed.**

Section 55 (1) of the Act states:

**Order of possession for the landlord**

**55** (1) 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.

I find that the effective end of tenancy date was July 23, 2012. However, the Landlord agreed to provide the Tenants with more time to move out of the rental unit and requested an Order of Possession effective August 10, 2012.

Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., August 10, 2012.**

**Conclusion**

The Tenants' application to cancel the Notices to End Tenancy is **dismissed.**

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., August 10, 2012.** This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: August 02, 2012.

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Residential Tenancy Branch