



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, RP, FF

### Introduction

This was the hearing of an application by the tenant to cancel a 10 day Notice to End Tenancy for unpaid rent and for other relief including a repair order. The tenant and the landlord agent called in and participated in the hearing.

### Issue(s) to be Decided

- Should the Notice to End Tenancy be cancelled?
- Is the tenant entitled to repair order?

### Background and Evidence

The rental unit is a house in Kamloops. The tenancy began on March 1, 2007. As of March 1, 2012 the monthly rent is \$1,230.00. Before March 1<sup>st</sup> the rent was \$1,190.00.

The tenant did not pay rent for March. The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on April 4, 2012. The Notice alleged that the tenant failed to pay rent due for March in the amount of \$1,230.00 and \$500.00 of arrears for a total of \$1,730.00. The Notice required the tenant to pay the said amount within five days or to apply for dispute resolution with five days. The tenant did not pay the rent. She filed her application for dispute resolution on April 10, 2012. At the hearing the tenant acknowledged that she has not paid rent for March, April or May, 2012. She disputed the landlord's claim that there was \$500.00 in arrears prior to March.

The tenant claimed to be entitled to withhold rent because there is a mould problem in the house. She submitted photographs of the house.

### Analysis and Conclusion

The *Residential Tenancy Act* provides by section 26 (1) that 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. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any repairs and there have been no unlawful rent increases since commencement of the tenancy. The tenant acknowledged that rent has not been paid for three months. The tenant has not established that she has any basis for withholding rent payments and I find that she has not provided evidence of any ground that would excuse her from the obligation to pay rent. The tenant's application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 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 have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

Because the tenancy has ended and the landlord has been granted an order for possession I will not address the tenant's claims for repair orders; the tenants claims for repairs, including emergency repairs are dismissed without leave to reapply.

.

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: May 03, 2012.

---

Residential Tenancy Branch