



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, LRE, MNDC OLC, PSF, RP, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated March 6, 2016 and setting the end of tenancy for April 30, 2016?
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. An order for a monetary order in the sum of \$1800
- d. An order to make emergency repairs
- e. A repair order
- a. An order for the abatement of past or future rent and if so how much?
- f. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on March 6, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on landlord on March 4, 2016. I find that the Amended Application for Dispute Resolution/Notice to Hearing was personally served on the landlord on March 11, 2016. With respect to each of the applicant's claims I find as follows.

### Issue(s) to be Decided

The issues to be decided are as follows:

- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated March 6, 2016?
- c. Whether the tenant is entitled to order for repairs and emergency repairs?
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- e. Whether the tenant is entitled to a monetary order and if so how much?
- f. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- g. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

There is some confusion as to when the tenancy began. The landlord testified it began on June 1, 2015. The tenant testified it began in October or November. The tenancy agreement is not in writing. The rent of \$850 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$425 at the start of the tenancy. The parties stated there is no written tenancy agreement.

### Tenant's Application to Cancel the one month Notice to End Tenancy: dated March 6, 2016

The grounds set out in the Notice to End Tenancy are as follows:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk

Policy Guideline #38 Repeated Late Payment of Rent provides as follows:

"The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

The landlord testified and provided documentary evidence in the form of e-mails and receipts that the tenant made the following late payments:

- October 2015 rent paid October 5, 2015
- December 2015 rent paid December 5, 2015
- January 2016 rent paid January 4, 2016
- March 2016 rent paid March 6, 2016

The tenant acknowledged the late payments. He testified he has been very ill and in a great deal of pain. He and the landlords are on different schedules and it is sometimes impossible for him to meet with the landlord to give them the rent cheque. He is involved in a gradual return to work and on occasion he has very long days of work. He was not prepared to simply slip the cheque under the door given the animosity of the landlord directed at him. He testified the landlord delayed in picking up the rent cheque in order to make the payment a late payment.

After carefully considering all of the evidence I determined the landlord has establish sufficient cause to end the tenancy based on repeated late payment of rent. The tenant has been late on 4 occasions. The Policy Guideline provides that 3 late payments is sufficient. The explanation given by the tenant is not sufficient to relieve him of his obligations to pay the rent on time. The landlord lives upstairs. Given by conclusion on this ground I determined that it was not necessary to consider the other grounds set out in the Notice to End Tenancy.

As a result I ordered that the application of the Tenant to cancel the One month Notice to End Tenancy be dismissed. The tenancy shall end on the end of tenancy date set in the Notice which is April 30, 2016.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Application for a Repair Order and Emergency Repairs:

I order that the landlord do the following by April 22, 2016 provided that the tenant gives the landlord access:

- a. Repair the kitchen faucet.
- b. Repair the lighting fixture in the hallway.

I dismissed the application for an order suspending or setting conditions on the landlord's right to enter the rental unit as the tenant failed to provide sufficient proof to establish that the landlord has illegally entered the rental unit.

Application for a Monetary order and a Reduction of Rent:

The tenant seeks a monetary order in the sum of \$1800 for the reduced value of the tenancy and an order for the reduction of rent by \$300 per month. The tenant testified as follows:

- When the tenant took possession the rental unit was in a sub standard condition but he was forced to rent it at that time because of his ill health.
- He requested the landlord to complete a painting and make repairs but the landlord failed to do so.
- The tenant included an e-mail dated March 1, 2016 setting out a number of complaints and request for repair as follows:
  - Main entry (Frame, Door, Hardware)
  - Kitchen faucets. Counters and Cupboards
  - Kitchen Floor (replace)
  - Kitchen Ceiling (Cracked and requires painting)
  - Kitchen walls (repair and paint)
  - Refrigerator foot plate
  - Corner moulding running down living room/kitchen floor
  - Living Room (Paint and Repair)

- Hallway (Shrunken Flooring, Overhead electrical fixture, Paint and repair walls)
- Bedroom Counter and Floor (Repair/Replace)
- Bath and Shower (Entire)
- Bathroom Walls (paint and repair)
- Bedrooms (Flooring, Paint and Repair)
- Security Hardware for Interior Adjoining Access Doors
- Previous Tenants abandoned Personal Property Piled Beside my Patio
- Garbage Area Obstructions (Garbage Piled for 10 Feet at Receptacles)

In addition the tenant testified the landlord changed the door handle and is denying regularly scheduled access. The landlord has denied the tenant's request for a mail key and has re-directed the tenant's mail. The landlord on a daily basis stomps on the upstairs floor to disrupt the tenant's enjoyment of the rental unit.

The tenant failed to produce other evidence to support this claim. He testified he provided approximately 20 photos for a previous hearing that was held December 2, 2015 (the date on the decision letter is incorrectly stated to be November 2, 2015) and thought they would be made available for this hearing. There is no record of any request made to the Branch to transfer the photos on this file.

The landlord disputes much of the tenant's testimony and included a 38 page submission which included the following evidence:

- Photographs of the rental unit taken on May 15, 2015 showing the condition of the rental unit a short period of time before the tenant took possession.
- The improper storage of tools and clutter in the rental unit.
- E-mails exchanged between the parties.
- The landlord denies stomping on the floor with the intention of disturbing the tenant.
- The landlord denies illegally entering into the tenant's rental unit
- The conduct of the tenant has caused the landlord significant health problems.

After carefully considering all of the evidence I determined the tenant is entitled to compensation in the sum of \$450 for the reduced value of the tenancy. I am satisfied there was a number of smaller repairs which should have been done to the rental unit. Further, I accept the tenant's evidence that the landlord promised to paint the rental unit but failed to do so.

However, the amount claimed by the tenant is not reasonable or supported by the evidence. It is worth noting that the tenant's application for emergency repairs, repairs and a rent reduction (which was heard on December 2, 2015 along with his application to cancel a one month Notice to End Tenancy) was dismissed with liberty to re-apply because the failed to submit particulars of repairs sought nor did he made any written request to the landlord prior to filing that application. That decision was rendered on December 18, 2016. The evidence produced by the parties indicate the earliest written request made by the Tenant was an e-mail on March 1, 2016 followed by the filing of the within Application for Dispute Resolution on March 4, 2016.

I determined the Tenant is entitled to a monetary order in the sum of \$450 plus \$50 for the cost of the filing fee (reduced because the tenant has been successful with half of his claim only) for a total of \$500.

#### Conclusion

**In summary I granted an Order for Possession effective April 30, 2016. I ordered the landlord(s) to pay to the tenant the sum of \$500.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: April 12, 2016

---

Residential Tenancy Branch

