



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, RP, PSF, LRE, LAT, RR

### Introduction

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

- a. An order to cancel a 10 day Notice to End Tenancy dated June 15, 2016 (extension of time to pay the rent).
- b. An order that the landlord make repairs to the unit, site or property
- c. An order that the landlord provide services or facilities required by law.
- d. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- e. An order for a monetary order in the sum of TBA
- f. An order authorizing the tenant to change the locks to the rental unit..
- g. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

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. The parties were advised that the documents submitted will only become evidence in this hearing if they are referred to in the oral testimony.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on June 15, 2016. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on June 25, 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:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated June 15, 2016?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order that the landlord provide services or facilities required by law?
- 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 authorizing the Tenant to change the locks to the rental unit?
- g. Whether the tenant is entitled to a monetary order?
- h. Whether the tenant is entitled to an order for the reduction of past or future rent and if so how much?

### Background and Evidence

The tenancy began on November 1, 2014 when the parties entered into a one year fixed term tenancy agreement that became month to month after the expiry of the year. The tenancy agreement provided that the tenant(s) would pay rent of \$1250 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$625 on October 31, 2014.

The tenant failed to pay the rent that was due on June 1, 2016 and the sum of \$1250 remains outstanding. On June 15, 2016 the landlord posted a 10 day Notice to End Tenancy on the tenant's door and a letter demanding that the rent for June be paid. The rent for June remains unpaid. However, the tenant has paid the rent for July and August 2016. .

The tenant gave the following evidence:

- The letter of the landlord dated July 13, 2016 and giving her until July 26, 2016 is evidence the rent has been paid.
- She is 72 years old
- She seeks a repair of the following:
  - Thermostat on her fridge
  - Stove is heating the wall around
  - The toilet has been fixed
  - The smoke detectors
  - The electric lights in the fireplace.

- She seeks compensation for the reduced value of the tenancy retroactive to January 21, 2016 caused by massive construction that lasted over a 2 month period. The workers were helpful in assisting her.
- The rental property was sold and the previous manager's employment was terminated in March 2016. The old management was much better and more sensitive to the needs of the tenants.
- She seeks compensation of \$300 to \$400 per month for 2 months during the construction period.
- The landlord has been slow in replacing the defective appliances.
- The heat has been inadequate.
- The landlord has failed to respond to her complaints about a noisy tenant.
- The appliances that were installed are not new but second hand
- In total she is seeking compensation in the sum of \$1200 to \$1500.

The landlord responded as follows:

- The new owners took possession on January 21, 2016.
- The tenant failed to advise the landlord of problems with the stove and toilet until mid March.
- I attempted to contact the tenant on several occasions in March but was unsuccessful.
- The tenant initially failed to give us access to complete the repairs.
- We have not received any complaints about issued since the toilet and stove were dealt with.
- The smoke detector was repaired by Reliable Fire.
- The appliances that were installed in the tenant's rental unit are all in good working order.
- Since January, the landlord has received 73 voice mails from the tenant that vary between 5 and 20 minutes in length.
- The landlord denies harassing the tenant.

Application to Cancel the 10 day Notice to End Tenancy Analysis:

After considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy based on non-payment of rent for June. The landlord used the approved form. I find that the rent for June in the sum of \$1250 was unpaid and remains unpaid. I do not accept the submission of the Tenant that the letter dated July 13, 2016 from the landlord to the Tenant acknowledges the rent for June was paid. It states "your cheque for June 1, 2016 rent has been returned by our bank unpaid. Therefore your rent for June 2016 remains outstanding." While it was not necessary for

the landlord to enclose a second Notice to End dated July 13, 2016 this does not void the result as the rent for June remains unpaid. The result may have been different had the tenant paid the arrears within 5 days of receiving the second notice. However, that did not happen and the rent remains unpaid.

Part of the tenants' application involves a claim for a reduction of rent and a claim for a monetary order. Section 26(1) of the Residential Tenancy Act provides as follows:

**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.

The tenant does not have a legal right to withhold the payment of the rent even if the landlord has failed to do what there are obliged to do.

The Application for Dispute Resolution includes a handwritten statement as follows; "Extension of Time to Pay the Rent." In 2004 the Residential Tenancy Act was amended to remove the ability of an arbitrator to grant an extension of time to pay the rent. The landlord stated that she wished to end the tenancy.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy without liberty to re-apply. The rent for August has been paid. The landlord has clearly indicated she is not interested in reinstating the tenancy. I order that the tenancy shall end on August 31, 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 August 31, 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 Monetary Order and a reduction of past and future rent:

I determined the tenant's application for a monetary order and a reduction of past and future rent (retroactive since Jan. 21, 2016) should be dismissed with liberty to re-apply for the following reasons:

- Rule 2.3 of the Rules of Procedure provides as follows:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

These claims are not related to the application to cancel a 10 day Notice to End Tenancy for non-payment of rent.

- One of the fundamental principles of our legal system is that an applicant must give a respondent sufficient notice of the claims they are making so that the respondent has an opportunity to prepare. Rule 2.5 provides as follows:

**“2.5 Documents that must be submitted with an Application for Dispute Resolution**

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.”

The Application for Dispute Resolution filed by the tenant failed to identify the amount she was claiming. It also fails to sufficiently identify what claims she is making.

- The tenant also failed to file a monetary order worksheet which would specifically identify the claims being made.
- The landlord is prejudiced by the failure to properly identify her claim as the landlord is not able to produce sufficient documentary evidence to defend itself.
- It is not possible for an arbitrator to properly consider the tenant's claims on the merits. The evidence presented by the Tenant was general and lacked sufficient particularity to assess the claims.

In summary I dismissed the Tenant's application for a monetary order and a reduction of rent with liberty to re-apply.

I dismissed I dismissed the tenant's application to provide services or facilities required by law (heat and hot water) and a repair order as the tenancy is coming to an end.

Conclusion

**I dismissed the Tenant's application to cancel the 10 day Notice to End Tenancy without liberty to re-apply. I granted an Order for Possession effective August 31, 2016 as required by the Act. I dismissed the tenant's application for a monetary order and a reduction of rent with liberty to re-apply. I dismissed the application for an order that the landlord provide services or facilities required by law and a repair order.**

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 05, 2016

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Residential Tenancy Branch

