



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2233 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated July 2, 2016
- b. A monetary order in the sum of \$8269
- c. An order for the cost of emergency repairs
- d. ]An order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- e. An order that the tenant 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 10 day Notice to End Tenancy was personally served on the Tenant on July 2, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlords on July 6, 2016. I find the Application for Dispute Resolution/Notice of Hearing filed by the Landlords was sufficiently served on the Tenant on July 16, 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 the 10 day Notice to End Tenancy dated July 2, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order to recover the cost of emergency repairs?
- d. Whether the tenant is entitled to an order for the reduction of rent for repairs, services of facilities agreed upon but not provided.
- e. Whether the tenant is entitled to recover the cost of the filing fee?
- f. Whether the landlords are entitled to an Order for Possession?
- g. Whether the landlords are entitled to A Monetary Order and if so how much?
- h. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?
- i. Whether the landlords are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into an oral tenancy agreement that provided that the tenancy would start on August 20, 2008. The rent is \$1200 per month payable on the first day of each month. The tenant did not pay a security deposit.

The tenant has failed to pay the rent for July and the sum of \$650 remains owing. He has also failed to pay the rent for August and the sum of \$1200 remains owing. In addition the tenant owes \$373.05 for water to the end of July 2016. The tenant testified the reason he failed to pay the rent was because the landlord refused payment.

Tenant's Application to cancel the 10 day Notice to End Tenancy:

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. The landlords used the approve form and the amount set out in the Notice was due and owing when the Notice was served.

The tenant testified that he attempted to pay the rent but the landlord refused to accept payment and thus the Notice is void. I prefer the evidence of the landlord to that of the tenant about the efforts the tenant made to pay the rent. The parties agreed that the tenant paid the sum of \$550 on July 1 or 2. The tenant testified he attempted to pay the balance of the rent but the landlord refused to accept it. The landlord testified he

refused to accept the payments because the tenant's attempts did not involve the payment of the entire rent.

The law provides that where a landlord serves a 10 day Notice to End Tenancy for non-payment of rent the Notice is void if the tenant pays the arrears within 5 days. If the arrears are paid after the 5 day period the landlord has an election to make. The landlord can accept the payment and reinstate the tenancy. Alternatively, the landlord can accept the payment on a "use and occupation basis" and the tenant must vacate the rental unit at the end of the rental payment period. I do not accept the testimony of the tenant that he attempted to pay the full arrears in full in the 5 days that would void the notice. His letter dated July 4 states that he has paid \$550, he has \$450 to give the landlord which would leave him \$200 short. The letter states that he assures the landlords he would pay the balance of \$200 by July 15. The \$450 and \$200 payments have not been made. I do not accept the submission of the tenant that it was not necessary to pay these sums as he used them to file the Application for Dispute Resolution.

In summary I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I ordered that the tenancy will 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.

#### Tenant's Application for a Monetary Order:

The Amendment to the Application for Dispute Resolution was filed by the Tenant on August 8, 2016. That Amendment seeks a monetary order in the sum of \$8269.15. The Rules of Procedure provide that the Amendment and supporting evidence must be received by the other party not less than 14 days before the hearing. The date of the hearing is August 19, 2016. The tenant failed to comply with that Rule. Further, the tenant gave the receipts to the landlord less than a week ago. Rule 4.6 provides as follows:

### **4.6 Serving an Amendment to an Application for Dispute Resolution**

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

A fundamental principle of our legal system is that an applicant must give the respondent notice of the claims the applicant is making so that the respondent has a fair opportunity to defend themselves. 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 tenant has submitted a large number of receipts and documents but he has failed to identify his claims and failed to provide a detailed calculation of any monetary claim being made. The Amendment form refers the Tenant to include a copy of the new Monetary Order Worksheet which was not done. It is not possible to determine what monetary claims the tenant is making.

I ordered that the tenants' application for a monetary order be dismissed with liberty to re-apply.

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 landlords would still be entitled to the Order for Possession even the tenant had been successful with his monetary claim as the tenant had the obligation to pay the rent in accordance with the Act even if he subsequently obtain a monetary order against the landlords.

I dismissed the remaining claims of the Tenant including the claim to recover the cost of the filing fee as the tenancy is coming to an end and the tenant has not been successful with this application.

Landlords' Application for an Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The tenant's application to cancel the Notice to The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for 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.

Landlord's Application for a Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of July (\$650 is owed) and August (\$1200 is owed). In addition I determined the tenant owes the sum of \$373.05 for water to the end of July. I landlords' claim for the latest bill was dismissed with liberty to re-apply as the landlords had not made this claim in the Application for Dispute Resolution.

I granted the landlord a monetary order in the sum of \$2223.05 plus the sum of \$100 in respect of the filing fee for a total of \$2323.05.

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: August 19, 2016

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Residential Tenancy Branch