



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, 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 a 10 day Notice to End Tenancy dated August 25, 2016.
- b. An order for a monetary order in the sum of \$10,940
- c. An order to pay the cost of emergency repairs.
- d. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- e. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- 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 10 day Notice to End Tenancy was sufficiently served on the Tenant on August 25, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by priority post on August 30, 2016.

The evidence presented by both parties was not satisfactory. The tenant relied on a number of receipts evidencing her monetary claims and a number of statements from other witnesses but she failed to deliver copies of those documents to the other side prior to the hearing. The Rules of Procedure provide that the evidence must be presented as soon as possible and in any event at least 2 weeks before the hearing. The landlord has been prejudiced by the failure of the tenant to provide this evidence as the landlord was not able to investigate the tenant's claims.

Much of the evidence is in dispute. However, the landlord was not available at the time of the hearing and failed to attend the hearing. Further, he failed to provide sufficient evidence to deal with the allegations of the Tenant.

#### 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 August 25, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to the cost of emergency repairs?
- d. Whether the tenant is entitled to an order that the landlord provide services or facilities required by the tenancy agreement or by law?
- e. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- f. Whether the tenant is entitled to recover the cost of the filing fee?

#### Background and Evidence

The tenant testified the respondent is a friend of hers. The tenancy commenced on January 15, 2016. The rent was set at \$900 per month. The representative of the landlord testified the rent was a \$1000 per month. The Act imposes an obligation on the landlord to ensure that the tenancy agreement is in writing. The landlord failed to do this. I determined the rent was set at \$900 per month payable in advance on the first day of each month. No security deposit was demanded or paid.

The house did not have hydro or running water and it was in poor condition. There was a lot of garbage. The tenant testified the landlord told her she could have the first month (February) rent free if she removed the garbage. She testified the garbage was removed.

There was a problem with the hydro. The tenant testified that the landlord had an electrician look at the wiring in the rental unit and was told it would cost over \$2500 to repair plus permits. She testified the landlord agreed with the tenant that she could deduct the cost of the electrical repairs from the rent. The tenant produced an invoice which shows the cost of \$3500 for the electrical work. The hydro has not yet been connected because the landlord has to make arrangements with B.C. Hydro.

The tenant has not made any rental payments to the landlord. The agent for the landlord served a 10 day Notice to End Tenancy on the Tenant at the end of August alleging \$4000 is owed in outstanding rent to August 1, 2016.

The representative of the landlord testified as follows:

- The tenant has not made any rent payments to the landlord at all.
- She was able to get talk to the electrician named on the invoice presented by the tenant. He told her the tenant still owes \$650 of that invoice. The work cannot be completed until the landlord makes arrangements with hydro.
- The tenant failed to provide her or the landlord with the evidence the tenant was relying on for her monetary claim.
- If the tenant has completed the work as alleged she failed to get the authority of the landlord to complete the work.

### Analysis

The lack of sufficient evidence creates significant problems for an arbitrator who is attempting to decide the case on its merits. However, I made the following determinations. I determined the rent was \$900 per month payable in advance on the first day of the month. I determined the landlord agreed the tenant could live in the rental unit for the first month (being the month of February) provided she remove the garbage. I find the tenant removed the garbage as agreed and the rent for February 2016 has been paid as a result.

I determined the landlord agreed that the tenant's obligation to pay rent could be satisfied the payment of electrical repairs. The invoice indicates that the repair work was to cost \$3500. However, I do not accept the tenant's testimony that she paid this full amount. I determined the tenant made a \$2200 pay and half of \$1300 payment or the sum \$650 for a total of \$2850. I determined the rent for March, April and May (\$900 per month) has been satisfied with this payment. There is a credit to the tenant of \$150.

The tenant made the following claims as set out in her monetary order worksheet that was allegedly support by receipts she provided at the hearing:

- Door and frame replacement of \$550.
- Rebuilding of fence in the sum of \$970.54.
- Cost of a generator in the sum of \$300
- Hydro from neighbours in the sum of \$450
- Plumbing repairs in the sum of \$938.

I dismissed those claims with liberty to re-apply. The tenant failed to provide the documents she was relying to the other side. The Rules provide that those documents must be provided to the other side as soon as possible or at the latest 14 days prior to the hearing. The tenant exaggerated her payment to the electrical contractor. Initially she testified she paid the full \$3500. Later, she agreed that the bill was not fully paid. I

accept the testimony of the agent for the landlord that \$650 remains owing. I am reluctant to accept third party evidence of the Tenant unless the landlord first has an opportunity to investigate whether the tenant made those payments and/or whether the landlord was agreeable to reimburse the tenant. The Tenant testified she was not familiar with the process and did not know she was required to give the documents to the other side. In the circumstances I determine it was appropriate to give the tenant leave to re-apply rather than ordering a dismissal without leave.

I dismissed the tenant's claim of \$2880 for diners out and \$588 for laundry. The tenant failed to provide any receipts or documentary evidence from third parties to support this claim. Further, the tenant testified she was obtaining hydro from neighbour. I do not accept her testimony that she did not use the hot plate to cook meals during this time. Similarly, the claim for laundry was without proof.

Application to cancel the 10 day Notice to End Tenancy:

The tenant testified the landlord promised that she did not have to start paying the rent until the landlord fixed the issues around connecting the hydro. The tenant also provided a number of letters confirming this promise. The landlord did not attend the hearing and did not provide evidence to dispute this testimony.

In the circumstances I determined the landlord failed to prove rent was owed and as a result I ordered that the Notice to End Tenancy dated August 25, 2016 be cancelled.

However, I determined that it was appropriate to give the landlord the right to serve a new 10 day Notice to End Tenancy based on non-payment of rent for the following reasons:

- The tenant has not made any rent payments to the landlord and it appears that rent is owed unless the landlord has agreed to the contrary.
- The evidence of the tenant that the landlord does not require the payment of rent until the hydro is restored is unusual.
- It may be that a reason the landlord failed to attend the hearing is the failure of the tenant to provide her documents to the landlord prior to the hearing. Had the tenant provided the documents the landlord would have been put on notice the tenant was taking this position and such notice may have encouraged the landlord to provide testimony to deal with this issue.
- I have exercised by discretion and granted the tenant the right to re-apply with a number of her claims. The landlord should have a similar right.
- There is a better chance the issues could be decided on the merits if both parties present relevant evidence in accordance with the Rules of Procedure.

I ordered that the landlord ensure hydro is provided to the property.

I dismissed the claim allowing the tenant a reduction of rent for repairs, services or facilities agreed upon but not provided with liberty to re-apply as I determined it was appropriate to sever this claim.

#### Conclusion

I determined the rent was \$900 per month. I determine the landlord agreed the rent for February was satisfied by the removal of garbage. I further determined the rent for March, April and May has been satisfied by the tenant's part payment of the electrical contractor's bill. The tenant is entitled to a credit of \$150 to be applied against future rent. I dismissed the tenant's claim for door and frame replacement, rebuilding, the fence, the cost of a generator, hydro from neighbour and plumbing repairs with leave to re-apply as the tenant failed to provide third party evidence to the other side. I dismissed the tenant's claim for meals and laundry without leave to re-apply as the tenant failed to prove those claims.

I ordered that the 10 day Notice to End Tenancy dated August 28, 2016 be cancelled. However, I have given the landlord the right to serve a new Notice to End Tenancy alleging the rent for June, July, August, September and October remain owing. This will give both parties an opportunity to present the relevant evidence at the hearing. I further ordered that the landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be applied against future rent.

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: October 24, 2016

---

Residential Tenancy Branch