



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR, ERP, LRE, MNDC, MNSD, MT OLC PSF, PP, OPR, MNR

### **Introduction**

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

- a. An order cancelling a 10 day Notice to End Tenancy for unpaid rent dated October 6, 2016.
- b. An order that the landlord make emergency repairs
- c. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. An order for the return of the security deposit.
- e. An order for more time to make the application
- f. An order that the landlord comply with the Act, regulation and/or tenancy agreement.
- g. An order that the landlord provide services or facilities required by law
- h. An order for repairs.

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 \$1375 for unpaid rent and damages
- c. 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 Notice to End Tenancy was personally served on the Tenants on October 8, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was personally served on the landlord on Oct 14, 2016. The landlord was not able to prove services of the landlord's Application for Dispute

Resolution on the Tenant. As a result I ordered that the landlord's application be dismissed with liberty to re-apply. With respect to each of the tenants' 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 for unpaid rent dated October 6, 2016.
- b. Whether the Tenant is entitled to an order that the landlord make emergency repairs
- c. Whether the Tenant is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit.
- d. Whether the Tenant is entitled to an order for the return of the security deposit.
- e. Whether the Tenant is entitled to an order for more time to make the application
- f. Whether the Tenant is entitled to an order that the landlord comply with the Act, regulation and/or tenancy agreement.
- g. Whether the Tenant is entitled to an order that he landlord provide services or facilities required by law
- h. Whether the Tenant is entitled to an order for repairs.

Background and Evidence

The tenants were living in the rental unit prior to the signing of the tenancy agreement. On October 2, 2015 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2015, end on August 31, 2016 and that the tenants would have to vacate at that time. The rent was \$1375 per month payable in advance on the first of each month. The tenants paid a security deposit of \$675 on September 15, 2015.

The landlord demanded that the Tenants vacate the rental unit. The tenants objected on the basis they had not spent a full year in the rental property. On August 16, 2016 the parties entered into a Mutual Agreement to End the Tenancy on September 30, 2016.

The tenants failed to vacate the rental unit. The tenants failed to pay rent for October. The landlord served a 10 day Notice to End Tenancy on the Tenants for unpaid rent. The tenants continued to live in the rental unit and have not paid the rent for October, November and December.

The tenants claimed compensation for being without hot water for the period from September 22, 2016 to October 26, 2016.

Tenant's Application:

After considering all of the evidence I determined there was no basis for an order to cancel the 10 day Notice to End Tenancy. Section 26(1) provides that the tenants must pay the rent even where the landlord has failed to do what it is supposed to do unless the Tenants have first obtained an order permitting the Tenant to withhold the rent. The landlord used the approved form and rent was owed for October.

Determination and Orders:

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 10 day Notice to End Tenancy. I order that the tenancy shall end.

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.

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.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The parties mutually agree to end the tenancy on December 31, 2016.
- b. The parties request the arbitrator issue an Order for Possession for December 31, 2016.
- c. The landlord waives its claim for the rent for October in exchange for the tenants release the landlord from all claims for compensation to the date of this hearing including the claim for compensation for the lack of hot water.
- d. The tenants shall pay the rent for November and December in the sum of \$2750 forthwith.
- e. The parties request that the arbitrator issue a monetary order in favor of the landlord for the sum of \$2750.
- f. This is a full settlement of claims between parties to the date of this order and each party releases and discharges the other from all other claims.

- g. The claim by the Tenants for the return of the security deposit and any possible claim the landlord damage to the rental unit shall be dealt with in accordance with the Residential Tenancy Act at the end of the tenancy.

Conclusion:

I dismissed the landlord's application with leave to re-apply for the failure to prove service. As a result of the settlement I granted an Order for Possession effective December 31, 2016 and I ordered that the Tenants pay to the Landlord the sum of \$2750. All other claims made in the Tenant's application are dismissed.

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: December 07, 2016

---

Residential Tenancy Branch