



# Dispute Resolution Services

Page: 1

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 \$3125 for unpaid rent and damages
- 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 for more time to file the Application to cancel the 10 day Notice to End tenancy.
- b. An order to cancel the 10 day Notice to End Tenancy dated January 3, 2017
- c. An order that the landlord make repairs or emergency repairs.
- d. An order allowing 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. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on January 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant on January 19, 2017 was served on the Landlord by mailing, by registered mail to where the landlord carries on business. I find that the Application for Dispute Resolution filed by the landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on January 27, 2017.

Preliminary Matter:

The tenant requested an adjournment on the basis that a close family member passed away this last weekend. The close family member was a cousin who lived with the Tenant in the past.

Rules 7.8 and 7.9 of the Rules of Procedure provide as follows:

**Adjourning a hearing**

**7.8 Adjournment after the dispute resolution hearing begins**

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

**7.9 Criteria for granting an adjournment**

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The landlord opposed the request for an adjournment.

After considering the submission of both parties I determined this was not an appropriate case to grant an adjournment. There is little likelihood the adjournment would result in the resolution of the matter. The adjournment is not required to provide for a fair opportunity for the party to be heard. The Tenant acknowledges she has failed to pay the rent and 2 months is owed. An arbitrator does not have the jurisdiction to grant an extension of time to pay the rent unless the landlord consents and an adjournment would not result in a different result. The landlord would be significantly prejudiced by an adjournment as it would be at risk at losing a third month rent. The request for an adjournment is denied.

#### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for more time to make this Application?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated January 3, 2017?
- c. Whether the tenant is to an order for emergency repairs or repairs?
- d. An order to allow the tenant to receive a reduction of rent for repairs, services or facilities agreed upon but not provided?
- e. Whether the tenant is entitled to recover the cost of the filing fee?
- f. Whether the landlord is entitled to an Order for Possession?
- g. Whether the landlord is entitled to A Monetary Order and if so how much?
- h. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- i. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties entered into a 6 month fixed term June 1, 2016, end on November 30, 2016 and become month to month after that. The tenant paid a security deposit of \$625.

The tenant failed to pay the rent for January 2017 and February 2017 and the sum of \$2500 remains owing. She testified she has been unable to pay the rent because a client of her has failed to pay her what that client owes. The tenant stated she will be able to pay the rent by the end of February.

The landlord stated he is not prepared to reinstate the tenancy.

The tenant gave testimony of a rodent problem and defects in the rental unit including a problem with the bathroom. The landlord responded by testifying the tenant failed to advise them of the problems in a timely and when advised, the matters were dealt with promptly.

Tenant's Application - Analysis:

The Notice to End Tenancy provides that if the Tenant wishes to dispute the Notice she must do so within 5 days of service. Her Application indicates she received it on January 6, 2017. Section 46 provides that where a tenant has failed to pay the rent the landlord may end the tenancy on the service of a 10 day Notice to End Tenancy. Section 46(4) and (5) provides as follow:

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

**(b) must vacate the rental unit to which the notice relates by that date (my emphasis).**

Section 66 provides that an arbitrator may extend the time limit only in "exceptional circumstances." The tenant testified she was unable to file on time because she was dealing with lawyer relating to a client failing to pay her who absconded, becoming ill with influenza and a fall on the property.

Policy Guideline 36 includes the following statements:

**" Exceptional Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said."

The tenant failed to provide any evidence to support her allegations of exceptional circumstances. On that basis the request for more time should be denied.

Even if more time was granted, the tenant's application to cancel the 10 day Notice should be dismissed on its merits. The Notice was on the approved government form.

The tenant acknowledged she failed to pay the rent for January and February and \$2500 remains owing. The tenant does not have the right to unilaterally have the tenancy reinstated if she makes the rent payment now. The landlord stated he is not prepared to reinstate the tenancy. The tenant testified as to defects in the property. She disputes the allegations made

be the Tenant. Even if the allegations were true the Tenant does not have the right to withhold the rent. Section 26(1) 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 is obliged to pay the rent even if the landlord failed to do was required.

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy without leave to re-apply.. I order that the tenancy shall end on the date set out in the Notice.

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. I set the effective day of the Order for Possession for February 28, 2017.

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.

As the tenancy is coming to an end I dismissed the tenant's claim for repairs and emergency repairs without leave to re-apply.. Further I determined the tenant failed to prove she was entitled to a reduction of rent and this claim is dismissed without leave to re-apply.

Further, I dismissed the tenant's claim for reimbursement of the cost of the filing fee without leave to re-apply as the tenant has not been successful.

Landlord's Application:

Analysis - Order of Possession:

For the reasons set out above I determined the landlord was entitled to an Order for Possession and an Order of Possession was granted effective February 28, 2017.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of January and February 2017 and the sum of \$2500 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$2500 plus the sum of \$100 in respect of the filing fee for a total of \$2600.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$625. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1975.

Conclusion:

I ordered that the Tenant's application be dismissed without leave to re-apply. I ordered that the landlord shall retain the security deposit of \$625. In addition, I ordered that the Tenant pay to the Landlord the sum of \$1975.

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 final and binding on the parties.**

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: February 20, 2017

---

Residential Tenancy Branch