



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR MNR ERP RP RR

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss, and emergency repairs under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

While the tenant had attended the hearing by way of conference call, the landlord did not. I waited until 11:15 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided undisputed testimony that the landlord was personally served with the tenant's application for dispute resolution hearing ('Application') and evidence on February 15, 2017. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

The tenant confirmed that she was personally served with the 10 Day Notice on February 8, 2017. In accordance with section 88 of the *Act*, I find that the tenant was

duly served with the 10 Day Notice, with a corrected effective date of February 18, 2017.

**Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for compensation for damages, loss, or emergency repairs?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

**Background and Evidence**

The tenant provided the following undisputed testimony as the landlord did not attend this hearing. This month-to-month tenancy in a multi-unit rental building began in January 2016 with monthly rent set at \$630.00 per month, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$315.00. The tenant testified that there was a written tenancy agreement, although she was never given a copy by the landlord.

The tenant was served the 10 Day Notice on February 8, 2017 by the landlord for paying only a portion of the February rent. The tenant does not dispute the fact that the rent was not paid as she held back \$330.00 of the rent for an emergency repair she had to complete on her own.

The tenant testified that there were a number of repairs that required attention, but were ignored by the landlord. The tenant testified that the toilet was not working properly and was leaking, that there was black mold on the ceiling, that the roof was leaking, and that she had to pay \$330.00 to an electrician to fix the furnace during Christmas. On February 14, 2017, six days after receiving the 10 Day Notice, the tenant had tried to get in touch with the landlord by phone in order to pay the outstanding rent, but the landlord had refused her payment.

On February 22, 2017 the landlord had completely shut off the electricity to the rental unit, and the tenant has been without electricity since that date. The tenant had to rely

on using an extension cord that was plugged into a neighbour's outlet, which the landlord removed. The tenant has been residing at a friend's home as she has no electricity or heat.

The tenant's witness, HF, provided sworn testimony that he was a friend of the tenant's and had provided assistance with her toilet. He testified that the toilet plunger provided to the tenant was not very good, and he had to purchase a new one for her. The witness provided further testimony that he had stayed at the residence for about a week and noticed that the toilet would overflow, regardless of what was put in it. He also noticed the roof was leaking, and dripping water into the rental unit. He testified that the landlord replaced the toilet, but it was still leaking everywhere.

The tenant's other witness, JW, also provided sworn testimony for this hearing. She testified that she was present when the building manager came by in November of 2016, and the tenant had informed the manager that she had no heat or electricity. She testified that the tenant had requested from the manager that her place be repaired, including the black mold and leaking roof, but nothing was done.

The tenant is seeking compensation in the amount of \$330.00 for the repairs she had to make to the furnace, as well as \$200.00 in groceries that were spoiled due to the electricity shut-off by the landlord. The tenant is also seeking an order for the landlord to restore the electricity to the rental unit, and make repairs to address the outstanding issues mentioned above. The tenant testified that she would pay the outstanding rent upon completion of the repairs, and she is seeking the cancellation of the 10 Day Notice issued to her.

### **Analysis**

I have considered the sworn testimony of the tenant and her witnesses as the landlord did not attend this hearing. The tenant did not deny that she did not pay the outstanding rent to the landlord as she was withholding the rent for repairs that she had requested from the landlord. The tenant testified that she had paid \$330.00 out of her own money to repair the furnace, and that there were numerous items that required the attention of the landlord, but were ignored.

Section 26(1) of the *Act* requires the tenant to pay rent when 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".

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - ...
  - (v) the electrical systems,
  - ...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs;

...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, the tenant's leaking roof and broken furnace may be considered emergency repairs. Sections 33(5)(b) and 33(6)(b) require the tenant to provide a written account of the emergency repairs accompanied by a receipt for the amount claimed. The tenant did not provide any testimony or any supporting evidence such as receipts to demonstrate that she had complied with these sections. Accordingly, I find that she did not have the right to deduct any rent for any repairs, nor am I able to find that the tenant is entitled to an order requiring the landlord to reimburse the tenant for the \$330.00 for furnace repairs.

The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end, the tenant has only confirmed that the rent has not been paid to the landlord. I found that the tenant does not have the right *under the Act* to deduct or withhold rent. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. Effectively, as of February 18, 2017, the corrected effective date of the 10 day Notice, the tenancy has come to an end.

Section 55(1) of the *Act* reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice is valid and complies with section 52 of the *Act*, and I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

The tenant provided undisputed, sworn testimony that the landlord had terminated the electricity services to the rental unit on February 22, 2017, after the tenant had filed for dispute resolution hearing. The tenant has been without electricity since that date. She further testified that the landlord had tried to prevent her from accessing electricity through alternative means, although electricity was an included utility in the tenancy agreement. Section 27(1) of the *Act*, states that a “ landlord must not terminate or restrict a service or facility if: (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement.” I accept the testimony of the tenant and her witnesses, and I find that the landlord failed to comply with Section 27 of the *Act*. Sections 65 and 67 of the *Act* allow me to issue a monetary award to the tenant if I determine that there has been “a reduction in the value of a tenancy agreement.” The tenant has been without electricity for almost one month, and accordingly I grant the tenant a \$630.00 Monetary Order, which is equivalent to her monthly rent. The tenant also made a monetary claim in the amount of \$200.00 for her spoiled groceries. No monetary worksheet was submitted, nor did the tenant provide any receipts. In the absence of these two items I find I must dismiss this portion of the tenant’s monetary claim.

As this tenancy has come to an end on February 18, 2017, I dismiss the remainder of the tenant’s application for repairs and a reduction in rent.

### **Conclusion**

I dismiss the tenant’s application to cancel the landlord’s 10 Day Notice. I find that the landlord’s 1 Month Notice is valid and effective as of February 18, 2017. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order,

this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I issue a monetary order in the tenant's favour in the amount of \$630.00 against the landlord for failing to provide electricity as agreed to in the tenancy agreement. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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: March 15, 2017

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Residential Tenancy Branch