



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNR

### Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

### Issues

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

If the tenancy is continuing, should the landlord be ordered to make emergency repairs and to comply with the Act?

### Background and Evidence

The tenancy began on September 1, 2015 with a monthly rent of \$1650.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$775.00 at the start of the tenancy.

The parties agreed that the tenants received the 10 Day Notice on February 13, 2018. The outstanding rent amount as per the 10 Day Notice was \$250.00 which was due on February 1, 2018.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding.

The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice. The tenant argued the \$250.00 was withheld to have emergency repairs done. The emergency repair as to change the locks on the front door as it would not lock. The tenant testified that the repairs have not yet been done as she was advised by the locksmith that she first required an order for the locks to be changed or permission from the landlord.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 26 of the Act requires that 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.

Pursuant to section 33 of the Act, a tenant may only deduct an amount for emergency repairs if a landlord fails to reimburse the tenant for amounts paid for emergency repairs.

I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. The tenant withheld an amount for emergency repairs which she had not even had completed or incurred an expense for.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 01, 2018

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Residential Tenancy Branch