



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR

### **Introduction:**

Both parties and a witness attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 3, 2018 to be effective April 13, 2018 by posting it on the door on April 3, 2018. The tenant filed this Application to Dispute on April 12, 2018 and said they served the landlord with their Application by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act)

- a) to cancel the Notice to End Tenancy;
- b) to be granted an extension of time as they filed this application late;
- c) to order the landlord to comply with section 32 of the Act and make necessary repairs; and
- d) to recover the filing fee for this application.

**Issues:** Is the tenant entitled to any relief? Are they entitled to an extension of time to make the application? Have they proved on a balance of probabilities that the landlord has neglected to maintain the property as required by section 32 of the Act?

### **Preliminary Issue:**

The landlord requested an amendment to the style of cause to show the landlord's professional name rather than the property manager's name. The tenant agreed and the amendment was made.

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on August 1, 2013, rent is currently \$1175 a month and \$525 was paid for a security deposit on July 23, 2013. The landlord testified that the tenant failed to pay the rent for April and

was served with a Notice to End the Tenancy on April 3, 2018 and that the rent is still outstanding. Furthermore, the tenant has not paid rent for May or June 2018 also. The landlord's agent requested an Order for Possession effective June 28, 2018 pursuant to sections 46 and 55 of the Act and a monetary order for unpaid rent.

The tenant testified he withheld rent for April, May and June because the landlord had not done repairs that he requested. He recounted how the landlord had sent in pest control in 2016 and 2017 and had eradicated a mouse infestation but had not fixed the places that mice had chewed, like the ends of the carpet and some holes. He provided some photographs and statements as evidence. He said he has a low income and has difficulty meeting rent obligations, especially if the landlord is not meeting his obligations to repair in a timely way. He mentioned the property manager being on vacation in one instance.

**Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. The tenant was one day late in filing his application and I allow this extension of time since it was a very minor delay. Although the tenant made complaints against the landlord, I find none of his complaints constitute valid reasons to withhold his rent. Section 26 of the Act requires a tenant to pay rent when due whether or not the landlord is fulfilling their obligations under the Act. Section 33 (5) and (7) permit a tenant to deduct from rent money paid for emergency repairs under certain conditions. I find this section does not apply to this case and the tenant did not pay for any repairs anyway.

I therefore dismiss his application to cancel the Notice to End the Tenancy. The tenancy ended April 13, 2018 pursuant to the Notice. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. I grant the landlord an Order for Possession effective June 28, 2018 as requested. Section 55(4) (b) provides in this type of application, the arbitrator may grant an order requiring payment of that rent. I find it was undisputed that the tenant owes \$3600 in rent for April, May and June 2018. This is comprised of \$1175 x 3 months plus \$75 in late fees (3x\$25). I find the landlord entitled to a monetary order for \$3600.

In respect to the tenant's application concerning repairs, I find insufficient evidence to support his application. I find the evidence illustrates they engaged pest control and

eradicated the mice and plugged the holes. I find it is moot to order further repairs (some of them cosmetic) as the tenancy is ended.

**Conclusion:**

I dismiss the application of the tenant without recovery of the filing fee due to lack of success.

I grant the landlord an Order for Possession effective June 28, 2018 and a monetary order for \$3600 for rent arrears, over holding rent and late fees. 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.

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: June 13, 2018

---

Residential Tenancy Branch