



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, CNR, CNL, FFT, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated March 28, 2018
- b. An order to cancel a 10 day Notice to End Tenancy dated April 4, 2018
- c. An order to cancel a 2 month Notice to End Tenancy
- d. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- e. 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 one month Notice to End Tenancy was served on the Tenants by posting on March 28, 2018. I find that the 10 day Notice to End Tenancy was served on the Tenants by posting on April 4, 2018. The landlords acknowledged receipt of the Application for Dispute Resolution/Notice of Hearing.

At the start of the hearing the landlords acknowledged they did not use the approved form for the two month Notice to End Tenancy. As a result I ordered that the 2 month Notice to End Tenancy be cancelled. Further, they stated they are not relying on the one month Notice to End Tenancy. As a result I order that the one month Notice to End Tenancy be cancelled.

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order to cancel the 10 day Notice to End Tenancy dated April 4, 2018.
- b. Whether the tenants are entitled to an order that the landlord comply with the Act regulations and/or tenancy agreement.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on December 15, 2017. The landlord testified that while something was written on paper they are unable to locate that document. The form of tenancy agreement from the Residential Tenancy was not used.

The landlord testified there was an agreement that the tenants would pay rent of \$1300 per month payable in advance on the first day of each month. They paid a security deposit of \$350 at the start of the tenancy.

The landlord testified the tenants failed to pay the rent for April 2018 (\$1300 is owed), May 2018 (\$1300 is owed) and June (\$1300 is owed).

The tenants did not dispute that they failed to pay the rent. They submitted the notice should be cancelled for the following reasons:

- The Notice to End Tenancy did not contain the second page.
- The landlord failed to prove that the water is drinkable.
- The rental unit is unauthorized and not permitted.
- The landlords failed to provide them with the written tenancy agreement.
- The landlords have disturbed their quiet enjoyment and have harassed them.
- The landlords failed to provide a mailbox which is illegal.
- The landlords have disrespected them.
- The landlords' application for an early end to the tenancy was dismissed in a previous arbitration.

The landlords testified the second page was included. The water is drinkable. Her husband suffers from cancer with a compromised immune system and drinks from the same well. It is tested by the Municipality every 3 months. The landlords dispute the other allegations. The previous hearing dealt with an application for an early termination of the tenancy. The arbitrator made the following ruling:

“The landlord’s application is dismissed without leave to reapply.

This tenancy continues until ended in accordance with the *Act*.”

## Analysis

Section 26(1) of the Residential Tenancy Act 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.

After carefully considering all of the evidence I determined the landlords have sufficient grounds to end the tenancy on the basis of the 10 day Notice to End Tenancy for the following reasons:

- I determined the landlord used the approved government form and that both pages were given to the Tenant. The tenants filed an Application for Dispute Resolution shortly after receiving it. The copy uploaded indicates the tenants' correct names were used and the landlord signed the form. I prefer the evidence of the landlord to that of the tenants and I find that the second page was given. .
- I determined the tenants failed to pay the rent for April 2018 and the sum of \$1300 is owed. The tenants have also failed to pay the rent for May and June 2018.
- The tenants do not have a lawful right to withhold the rent. They do not have an order from an arbitrator permitting this to occur. They have not paid money to make an emergency repair.
- The other defences raised by the tenants are not relevant to the validity of the 10 day Notice to End Tenancy.
- The previous arbitration dismissed the landlord's application for an early termination of the tenancy. It provided that the tenancy shall continue in accordance with the Act. This does not prevent the issuance of an Order of Possession in this hearing.

I dismissed the tenants' application for an order to cancel the 10 day Notice to End Tenancy. I ordered the tenancy shall come to end. The claim that the landlords comply with the Act, regulations and tenancy agreement is also dismissed as the tenancy is

coming to an end. I dismissed the tenants' application to recover the cost of the filing fee as the tenants have not been success with this application.

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 on 2 days notice.

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 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: June 12, 2018

---

Residential Tenancy Branch