



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, RP, RR, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for an Order for emergency repairs, an Order for regular repairs, an Order to reduce the rent for repairs or services not provided, and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and one of the Tenants were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenants, along with copies of their evidence. The Landlord did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the 10 Day Notice be cancelled?

If the 10 Day Notice is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency or regular repairs?

Should the rent be reduced due to repairs or services not provided?

Are the Tenants entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2017. Monthly rent in the amount of \$2,300.00 is due on the first day of each month. At the outset of the tenancy, a security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid.

The agent for the Landlord testified that he only recently became involved with this property due to the previous property manager passing away. As such, he was aware that a 10 Day Notice was served to the Tenants in April 2018, but did not have access to the details of this notice.

However, the Landlord testified that he served the Tenants with another 10 Day Notice on June 25, 2018 by posting it on their door. He stated that at the time, rent was outstanding in an amount of \$5,100.00.

The Tenant testified that they received a 10 Day Notice in April 2018. This 10 Day Notice was submitted into evidence, but was only a partial photo of the notice. The Tenants originally applied to cancel the notice, but their application was dismissed due to a service issue.

The Tenant testified that she applied again to dispute the 10 Day Notice on June 19, 2018 which led to this hearing. When she received another 10 Day Notice on June 25, 2018, she filed an amendment to dispute that notice under the same application.

The Tenant provided testimony that she submitted the 10 Day Notice dated June 25, 2018 to Service BC to be included in evidence, but the notice did not appear to be submitted into evidence. As such, the parties were asked to submit the 10 Day Notice into evidence following the hearing.

The 10 Day Notice was faxed to the Residential Tenancy Branch by the Landlord following the hearing. The notice, dated June 25, 2018 stated rent in the amount of \$5,100.00 was outstanding on June 1, 2018. The effective end of tenancy date was stated on the notice as July 8, 2018.

The Landlord testified that although a partial payment was made towards rent owing, rent is still outstanding in an amount over \$9,000.00. The Tenant agreed that rent has not been paid for May, June, July and August 2018.

The Tenant provided testimony that rent has not been paid due to the condition of the home and the repairs that are needed. The Tenant stated they have emailed and texted the Landlord many times to have the repairs completed, but have not had a response, nor have any of the issues been completely resolved.

The Tenant testified as to concerns with mice and rats in the home, a rotting deck that is unsafe to use, a broken fence in the yard, a toilet that is broken and some plumbing issues in the home that cause water to leak onto the floor in the basement. The Tenant also stated that the washing machine is no longer working, as of a few weeks ago.

When asked to clarify the emergency repairs that are needed in the home, the Tenant responded that the electrical system in the home is not safe due to the way the washing machine is set up, there are issues with the plumbing, the downstairs toilet does not work, and the deck is rotting.

The Tenants would like to have a reduction in rent of \$700.00 per month beginning in January 2018 as compensation for the repairs needed in the home that were not completed.

The Landlord stated that he has made many attempts to contact the Tenants regarding their request for repairs and has not heard back. He read from some emails in which he offered times to come by the home, which he states were not responded to by the Tenants.

The Landlord testified that there are no emergency repairs needed and any other repairs will be dealt with promptly. He stated that in order to deal with the repairs, the Tenants need to provide him access to the home to assess the repairs and have professionals come in to complete the repairs.

The Landlord reported that the only issues he was previously aware of were the possible mice in the home and the Tenants' concerns with the deck. He stated that he only became aware of the other issues through the hearing.

The parties discussed a possible settlement during the hearing, but were unable to come to an agreement.

### Analysis

The parties were in agreement that rent has not been paid for the months of May, June, July and August 2018. However, as the Tenant claimed that rent was withheld due to repairs needed in the home, I look to the *Act* to see if the Tenants had the right to withhold rent.

Section 26 of the *Act* states the following:

**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.

I also refer to Section 33(3) of the *Act* regarding emergency repairs:

- (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.
- (4) A landlord may take over completion of an emergency repair at any time.
- (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.

Emergency repairs as defined by Section 33(1) are repairs that are urgent and necessary for the health and safety of the occupants and the property.

I fail to find sufficient evidence to establish that emergency repairs were needed in the home, or that the proper process for notifying the Landlord about the need for emergency repairs was followed. I also find no evidence that there are any emergency repairs currently needed in the home.

Section 32 of the *Act* outlines a tenant and landlord's responsibility in maintaining the rental unit and I find that a landlord is responsible for regular repairs in the unit. However, I note that a tenant must notify the Landlord of the need for repairs and provide access to the home in order for those repairs to be conducted. Based on the conflicting testimony of the parties, I am unable to establish whether the Landlord was sufficiently notified and able to undertake the repairs.

However, regardless of whether the Landlord was notified regarding the need for repairs, this is not a reason under the *Act* to withhold rent. As such, I find that the Tenants had no reason to not pay rent for the months of May, June, July and August 2018, and that rent during this time remained due as stated in the tenancy agreement.

The Tenants have also asked for a reduction in rent dating back to January 2018 for the time they lived in a home where repairs were not completed.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find insufficient evidence before me to establish that the repairs were needed during this time, that the Landlord was notified of the need for repairs, and that the Landlord was assisted in accessing the home to complete the repairs.

I also find insufficient evidence to establish the value of the loss experienced by the Tenants and that they experienced a loss of \$700.00 per month due to repairs that were needed. Therefore, I decline to award any compensation for loss during the period of January to August 2018.

In regard to the 10 Day Notice, I find that the notice in dispute is the 10 Day Notice dated June 25, 2018, which was added to this Application by the Tenants through an amendment. The Landlord did not have information on the 10 Day Notice issued in April 2018 and the Tenant testified that the 10 Day Notice from April 2018 was cancelled due to a rent payment made.

I refer to Section 46(4) of the *Act*, which states that a tenant has 5 days to pay the rent owing or to dispute the notice. As the tenant already had a dispute in process that they applied for on June 19, 2018, and added an amendment to their Application, I find that they applied to dispute the 10 Day Notice in time.

However, the Tenants agree that rent was unpaid for four months, and was therefore not paid in full within 5 days of reasoning the 10 Day Notice. I also find that they did not have a reason under the *Act* to withhold any amount of rent.

Therefore, as the rent was not paid in full within the 5 days allowable under the *Act*, and an amount of rent was outstanding at the time the 10 Day Notice was issued, I find that the 10 Day Notice dated June 25, 2018 is valid.

In accordance with Section 55 of the *Act*, if a notice to end tenancy is upheld, and the notice complies with Section 52 of the *Act*, the Landlord is entitled to an Order of Possession. In review of the 10 Day Notice submitted into evidence, I find that the 10 Day Notice is in compliance with Section 52 of the *Act*. Therefore, I grant the Landlord a two day Order of Possession.

As the Tenants were not successful in their application, I decline to award the recovery of the filing fee.

### Conclusion

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

The Tenants' claims for repairs, emergency repairs and a reduction in rent are 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: August 15, 2018

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Residential Tenancy Branch