



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GARY WRIGHT PRO-GRESS CONST.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNR, ERP, MNRT, RP, RR

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- to cancel a Notice to End Tenancy for Unpaid Rent;
- for an Order requiring the Landlord to make repairs/emergency repairs;
- for a rent reduction; and
- to recover the cost of emergency repairs.

The Tenant stated that on September 11, 2018 Dispute Resolution Package and five pages of evidence submitted to the Residential Tenancy Branch on September 06, 2018 were personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 12, 2018 the Landlord submitted eight pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant's son on October 12, 2018. The Tenant acknowledged receiving this evidence from her son and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

### Preliminary Matter #1

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

I find that the most urgent issue in dispute is possession of the rental unit and I will, therefore, only consider issues related to that matter, which include the Tenant's application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent or utilities and the Tenant's application to recover the cost of emergency repairs. The Tenant's application to recover the cost of emergency repairs is being considered because the Tenant may have had the right to withhold rent if emergency repairs were made.

The Tenant's application for an Order requiring the Landlord to make repairs and the request for a rent reduction are dismissed, with leave to re-apply.

### Preliminary Matter #2

At the outset of the hearing the Tenant stated that she wished to call a witness. At the end of the hearing she stated that she no longer needed to call this witness, as the witness did not have any evidence that was relevant to the remaining issues in dispute at these proceedings

### Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?  
Has the Tenant made emergency repairs and, if so, is she entitled to recover the cost of those repairs from the Landlord?

### Background and Evidence

The Tenant stated that this tenancy began in 2011. The Agent for the Landlord stated that he does not recall when the tenancy began. The parties agree that rent of \$575.00 is due by the first day of each month.

The Tenant stated that the bathroom in the rental unit was in poor condition; that she informed the Landlord of the need to paint the bathroom in September of 2016; she asked on at least three other occasions if the Landlord would paint the bathroom; in September of 2017 she sent the Landlord a text message regarding the need to repair

the bathroom; she had the bathroom painted in December of 2017/January of 2018; she paid \$150.00 to have the bathroom painted; and she never provided the Landlord with an invoice for that painting.

The Agent for the Landlord stated that in November or December of 2017 the Tenant was provided with paint for the bathroom; the Tenant first told the Landlord that the bathroom needed painting approximately one month before paint was provided to her; he never received a text message from the Tenant regarding the need to paint; and the Tenant never provided the Landlord with an invoice for painting.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on September 01, 2018. The Tenant stated that she received this Notice on September 01, 2018. The Notice declares that the rental unit must be vacated by September 10, 2018.

The Agent for the Landlord stated that rent of \$300.00 is still due for December of 2017 and rent of \$300.00 is still due for January of 2018. The Tenant stated that she believed these amounts had been paid by a third party, although she now understands that \$600.00 in rent is overdue.

The Landlord and the Tenant agree that the overdue rent of \$600.00 remains unpaid.

The Advocate for the Tenant stated that on September 03, 2018 she told the Agent for the Landlord that the Tenant could pay the \$600.00 outstanding rent if the Landlord would allow the tenancy to continue. The Advocate for the Tenant stated that the Tenant's ability to secure this payment was contingent on receiving confirmation from the Landlord that the tenancy would continue. She stated that the Landlord told her that the Tenant could not remain in the rental unit even if she paid the outstanding rent

The Landlord stated that the Advocate for the Tenant did not tell him that the Tenant could pay the \$600.00 outstanding rent and he did not tell her that the Tenant could not remain in the rental unit even if she paid the outstanding rent.

## Analysis

Section 33(1) of the *Act* defines "**emergency repairs**" as 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,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Section 32(3) of the *Act* authorizes tenants to make emergency repairs when:

- (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.

Section 32(5) of the *Act* requires a landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 32(7) of the *Act* stipulates that if a landlord does not reimburse a tenant as required under section 32(5) of the *Act*, the tenant may deduct the amount from rent or otherwise recover the amount.

Even if I accepted that painting a bathroom, in these circumstances constituted an "emergency repair" and even if I accepted that the Tenant painted the bathroom after complying with section 32(3) of the *Act*, I would not conclude that the Tenant is entitled to compensation for painting the bathroom. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant did not provide the Landlord with an invoice for painting the bathroom. As the Tenant did not provide the Landlord with an invoice, I find that the Landlord is not obligated to pay for the cost of the painting pursuant to section 32(5) of the *Act*.

As the Tenant has failed to establish that she is entitled to compensation for making emergency repairs, I dismiss her claim for compensation for making emergency repairs. As the Tenant has failed to establish that she is entitled to compensation for making emergency repairs, I find that she did not have the right to deduct the cost of painting the bathroom from her rent.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. On the basis of the undisputed evidence I find that \$600.00 in rent was overdue on September 01, 2018 and that there is no evidence to indicate that the Tenant had the right to deduct that amount from the rent. I therefore find that the Tenant failed to pay \$600.00 in rent for December of 2017 and January of 2018.

Section 46(1) of the *Act* authorizes a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. On the basis of the undisputed evidence I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on September 01, 2018 and that the Tenant received this Notice on September 01, 2018.

As the Tenant received Ten Day Notice to End Tenancy for Unpaid Rent on September 01, 2018 I find that the earliest effective date of the Notice was September 11, 2018. Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was September 11, 2018.

As all of the rent had not been paid by September 01, 2018 and the Landlord served the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent on September 01, 2018, I find that the Landlord has grounds to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that was served on September 01, 2018.

I find that there is insufficient evidence to corroborate the Agent for the Landlord's testimony that she told the Landlord that the Tenant could pay the \$600.00 outstanding rent if the Landlord would allow the tenancy to continue or to refute the Agent for the Landlord's testimony that this conversation did not occur.

Had the outstanding amount actually been paid by September 06, 2018, I would have set aside the Ten Day Notice to End Tenancy for Unpaid Rent in accordance with section 46(4) of the *Act*. On the basis of the undisputed evidence I find that the outstanding amount has not been paid and that the Notice cannot, therefore, be set aside pursuant to section 46(4) of the *Act*.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

### Conclusion

I grant the Landlord an Order of Possession that is effective on **October 31, 2018**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: October 22, 2018

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Residential Tenancy Branch