



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNL-4M, ERT, MNDCT, OLC, PSF, RP, RR, FFT

Introduction:

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

- a. An order to cancel a 10 day Notice to End Tenancy dated September 19, 2018
- b. An order to cancel the four month Notice to End Tenancy dated September 14, 2018
- c. An order for emergency repairs
- d. A monetary order in the sum of \$11,210
- e. An order that the landlord comply with the Act, Regulations and or tenancy agreement
- f. An order that the landlord provide services or facilities required by the tenancy agreement or law
- g. A repair order
- h. An order for a monetary order
- i. An order that the landlord reduce rent for repairs, services or facilities agreed upon but not provided.
- j. 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.

The parties decided to negotiate a settlement rather than to proceed with the litigation. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present and that they had voluntarily agreed to the settlement.

I find that the 4 month Notice to End Tenancy was served on the Tenants by posting on September 19, 2018. I find that the 10 day Notice to End Tenancy for non payment of rent was served on the Tenants by posting on September 19, 2018. Further I find that

the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the landlords reside on September 21, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order to cancel a 10 day Notice to End Tenancy dated September 19, 2018?
- b. Whether the tenants are entitled to an order to cancel the four month Notice to End Tenancy for renovations dated September 19, 2018?
- c. Whether the tenants are entitled to an order to an order for emergency repairs?
- d. Whether the tenants are entitled to an order to monetary order and if so how much?
- e. Whether the tenants are entitled to an order to an order that the landlord comply with the Act, Regulations and or tenancy agreement?
- f. Whether the tenants are entitled to an order to order that the landlord provide services or facilities required by the tenancy agreement or law?
- g. Whether the tenants are entitled to an order to a repair order?
- h. Whether the tenants are entitled to an order to an order that the landlord reduce rent for repairs, services or facilities agreed upon but not provided?
- i. Whether the tenants are entitled to an order to an order to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy in writing that provided that the tenancy would begin on August 18, 2018 and end on August 31, 2018. The rent was \$1550 per month payable in advance on the first day of each month. The Tenants paid a security deposit of \$775 at the start of the tenancy.

The tenants testified they vacated the rental unit on October 31, 2018. The tenants have not paid the rent for September 2018 and October 2018. However, they submit

The landlords testified they intend to renovate the property.

Settlement:

This is a disputed case. Rather than proceed with the litigation the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The parties mutually agree to end the tenancy on October 31, 2018.
- b. The parties request the arbitrator to issue an Order of Possession effective October 31, 2018.
- c. Subject to this agreement the Landlords release and discharge the Tenants from all claims they may have against the Tenants with respect to this tenancy including claims for non-payment of rent.
- d. Subject to this agreement the Landlords shall return the security deposit of \$775 to Tenants upon confirmation that the Tenants vacated the rental unit.
- e. Subject to this agreement the Tenants release and discharge the Landlords from all claims they may have against the Landlords including those claims raised in this Application, claims for the equivalent of one month rent under section 51(1) and claims of the Tenants might have against the landlord for the landlord's share of the hydro.
- f. The Tenants retain the rights under section 51(2), 51.2, 51.3 which is provided below if the landlord fails to comply with the provisions of section 51 of the Act..

Orders:

As a result of the settlement I granted an Order of Possession effective forthwith. All other claims brought by the Tenants are dismissed without leave to reapply.

The parties have arranged to meet at the tomorrow morning to return the keys and return the security deposit.

The tenants must be served with this Order as soon as possible if they have not vacated the rental unit. Should the tenants 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.

As a courtesy to the parties I have pasted the relevant provisions of section 51 of the Act.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

....

Not in force

51.1 [Not in force.]

Right of first refusal

51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

(2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant

(a) a notice of the availability date of the rental unit, and

(b) a tenancy agreement to commence effective on that availability date.

(3) If the tenant, on or before the availability date, does not enter into a tenancy agreement in respect of the rental unit that has undergone the renovations or repairs, the tenant has no further rights in respect of the rental unit.

(4) A notice under subsection (1) or (2) must be in the approved form.

Tenant's compensation: no right of first refusal

51.3 (1) Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2).

(2) The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from complying with section 51.2

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: November 02, 2018

Residential Tenancy Branch