



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, LRE, OLC, PSF, RP, RR

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an order for emergency repairs, to suspend or restrict the Landlords’ right to enter, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, for an order to provide services or facilities required by the tenancy agreement or law, for an order for regular repairs, and for a reduction in rent for repairs, services or facilities agreed upon but not provided.

The Tenants and the Landlords were present for the teleconference hearing, as well as a family member of the Landlords who was present but did not present any testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package along with a copy of the Tenants’ evidence, including the videos submitted. The Tenants confirmed receipt of the Landlord’s evidence package and as they received it on December 3, 2018, it was clarified that they received it within the timeframe provided by the *Residential Tenancy Branch Rules of Procedure*. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

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.

### Preliminary Matters

At the outset of the hearing, the legal name of one of the Landlords was clarified. As the Application for Dispute Resolution did not name the Landlord with her legal name, this was amended on the application. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

As stated in rule 2.3 of the *Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Accordingly, I exercise my discretion to dismiss the Tenants' claims, except for the dispute over the One Month Notice and the Tenants' claim for emergency repairs, due to the urgent nature of these claims. The parties were informed at the beginning of the hearing of the claims that were dismissed and the claims that would be addressed through a written decision. The Tenants are at liberty to reapply for the dismissed claims.

#### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, are the Landlords entitled to an Order of Possession?

Should the Landlords be ordered to complete emergency repairs?

#### Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on October 21, 2015. Current monthly rent is \$1,530.00. A security deposit of \$750.00 was paid at the outset of the tenancy.

Although not stated in the tenancy agreement, the parties agreed that rent is due by the first day of each month.

On November 15, 2018, the Landlords served the Tenants in person with a One Month Notice. The One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- Tenant is repeatedly late paying rent

Further detail on the One Month Notice was provided as follows:

*These are the most recent late payments:*

- *Aug 6/18 paid 750.00 (receipt says 765.00 thought he would pay half)*
- *Aug 17/18 paid the balance of 750.00*
- *Sept 2/18 paid rent late*
- *Nov 5/18 rent paid 5 days late*

(Reproduced as written)

The effective end of tenancy date of the One Month Notice was stated as December 15, 2018.

The Landlords provided testimony that rent has been paid late approximately 4 or 5 times in the last year, as well as at times in previous years. The Landlord submitted four receipts into evidence. A receipt dated August 6, 2018 for a payment of \$765.00, a receipt dated August 17, 2018 for a payment of \$780.00, a receipt dated September 2, 2018 for a payment of \$1,530.00 and a receipt dated November 5, 2018 for a payment of \$1,530.00.

The Tenants agreed that rent was paid after the 1<sup>st</sup> for August, September and November 2018 as stated by the Landlords. However, the Tenants stated that there is a five-day grace period in which to pay the rent each month. They also stated that there have been many months when they have paid the rent early.

The Tenants stated that they paid rent late in January 2016, but that was the only other time rent had been paid late. There was no receipt submitted into evidence for January 2016, but a rent receipt dated January 1, 2017 shows a payment of \$780.00 and a receipt dated January 5, 2017 shows a payment of \$720.00.

The Tenants also stated that the receipt they have for November 2018 rent is dated November 4, 2018, showing that the Landlord changed their copy of the receipt to say November 5, 2018. The Tenants submitted many receipts into evidence showing the times that they have paid their rent early during the tenancy.

The Tenants provided further testimony that they have withheld rent payments at times due to the Landlords not completing repairs in the rental unit. They also stated that there have been times when the Landlord provided permission for them to pay the rent in two installments, such as what occurred in August 2018.

For November 2018, the Tenants testified that they paid rent on November 5, 2018 as they were intending to pay for a plumber for repairs in the rental unit. They stated that

they received a 10 Day Notice to End Tenancy for Unpaid rent on or around November 3, 2018, but it was cancelled when they paid the rent on November 5, 2018.

As for the order for emergency repairs, the Tenants testified as to ongoing repairs required in the rental unit. They stated that there are black mould issues in the kitchen under the sink, as well as in the bathrooms. They also stated that one of the showers leaks around the edges where there is no caulking, causing water to get into the walls causing risk for further mould issues.

The Tenants stated that repairs are also needed around a skylight in the rental unit that leaks, causing water to leak onto the ceiling and walls. They also stated that the house is sinking causing dangerous cracks in the floor that the Tenants have covered with tape and paper to avoid getting injured. The Tenants stated that they need many areas of the home repaired in order to pay the rent. The Tenants submitted 8 photos of the home, including the bathtub that they stated requires emergency repairs due to water spraying out of the faucet and into the walls.

The Landlord provided testimony that they had a plumber come to the home regarding the issue with the shower and as the plumber needed to order a part, the repairs have not yet been completed. They also stated that there is another shower that the Tenants could have used. The Landlords testified as to an issue with a toilet in the rental unit that was fixed when the Landlords became aware that it needed repairing.

The Tenants submitted approximately 10 video recordings into evidence, including one that they stated was taken on November 5, 2018 showing them paying the rent in cash to the Landlord.

### Analysis

As for the Tenants' claim for emergency repairs to be completed, I refer to Section 33 of the *Act* which states the following:

- 33 (1) In this section, "**emergency repairs**" means 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.

While the Tenants presented testimony and evidence regarding the presence of mould in the kitchen and bathrooms, water leaking through a skylight, a leaking shower and that the house is sinking, I do not find sufficient evidence before me to determine that these are emergency repairs that fit the definition under Section 33 of the *Act*. It also seemed from the testimony of both parties that the Landlords are aware of the issues with the water leaking from the shower and are in the process of having this repaired.

As I am not satisfied that there are repairs needed in the rental unit that fit the definition of emergency repairs, I decline to make any orders for emergency repairs to be completed. The Tenant's application for emergency repairs is dismissed, without leave to reapply.

Regarding the One Month Notice, I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenants received the One Month Notice in person on November 15, 2018 and filed an amendment to their Application for Dispute Resolution on November 16, 2018, I find that they applied within the timeframe provided under the *Act*. Therefore, the issue before me is whether the reason provided on the One Month Notice is valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenants due to repeated late payment of rent, pursuant to Section 47(1)(b) of the *Act*. *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* states that three late payments are the minimum to justify a notice given for this reason. The Policy Guideline further states that the late rent payments do not have to be consecutive.

I also refer to Section 26(1) of the *Act* which 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.

Although the tenancy agreement submitted into evidence does not state the day that rent is due, both parties were in agreement that rent is due on the first day of each month.

The parties were also in agreement that rent was paid late a minimum of three times; August 6, 2018 (partial payment), August 17, 2018 (remainder of August rent), September 2, 2018 and November 5, 2018. I also find evidence that rent was paid late in January 2017 as indicated by the receipts that show a partial payment on January 1, 2017 and the remainder of the rent paid on January 5, 2017. Therefore, I find evidence that rent has been paid late four times since 2017, with three of those incidences occurring in the past few months.

Although the Tenants stated that they have a five-day period each month in which to pay the rent, Section 26(1) of the *Act* clearly states that rent must be paid when it is due. Both parties were in agreement that rent is due on the first day of each month.

Despite the Tenants' testimony regarding reasons why the rent was withheld at various times during their tenancy, I do not find evidence before me that the Tenants had a reason under the *Act* to pay the rent late, or to withhold rent payments at any time.

Therefore, I find that the Landlords had valid reason to serve the Tenants with a One Month Notice due to repeated late payment of rent. Accordingly, the Tenants' application to dispute the One Month Notice is dismissed without leave to reapply.

Pursuant to Section 55(1) of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, with the provision that the notice complies with Section 52 of the *Act*. Upon review of the One Month Notice, I find it to comply with Section 52 of the *Act* and therefore I grant the Landlords an Order of Possession.

I also note that pursuant to Section 53 of the *Act*, an incorrect effective date is automatically corrected. As the Landlords served the One Month Notice on November 15, 2018, the correct end of tenancy date of the notice is December 31, 2018 in

accordance with Section 47(2) of the *Act*. Therefore, I grant the Landlords an Order of Possession effective December 31, 2018 at 1:00 pm.

Conclusion

The Tenants' claims for emergency repairs and to cancel the One Month Notice are dismissed, without leave to reapply.

I grant an Order of Possession to the Landlords effective **on December 31, 2018 at 1:00 pm**. This order must be served 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.

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: December 12, 2018

---

Residential Tenancy Branch