



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR DRI ERP FFT MNDCT MNRT OLC RP RR

### Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks orders under section 32 (regular repairs), section 33 (cost of emergency repairs), sections 41-43 (dispute rent increase), 46(4) (an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent), 62 (landlord's compliance with the Act), 65 (reduced rent for repairs/services/facilities not provided), 67 (compensation), and 72 (recovery of the filing fee).

A dispute resolution hearing was convened on January 4, 2019 and adjourned to today's date for the purpose of allowing the tenant to re-submit his documentary evidence. The tenant, his partner, and two agents for the landlord attended the hearing, and the parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses

My Interim Decision of January 4, 2019, outlines the reasons why this adjournment was made. In my Interim Decision I stated that the tenant must submit his evidence to a Service BC office no later than January 9, 2019. In reviewing this file, it appeared that the tenant did not submit his documentary evidence until January 16, 2019. He explained that he never received anything from the Residential Tenancy Branch (the "Branch") except a reminder about this hearing, and that he had lost his computer.

While the tenant failed to comply with my order as set out in the Interim Decision, I will consider the submitted documentary evidence as it pertains to the issue of whether the tenant is entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The landlord submitted various documentary evidence, including a copy of the Notice.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

#### Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that, while some of the claims are interrelated, the primary issue which must be addressed is whether the tenancy will continue. And, while I will consider the tenant's oral and documentary evidence regarding the other claims, the sole claim that I will address in this decision is whether the tenant is entitled to an order cancelling the Notice. As such, pursuant to Rule 2.3, I hereby dismiss all the tenant's claims except for the claim for an order cancelling the Notice and the claim for compensation for the filing fee. All other claims are dismissed with leave to reapply.

#### Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?
3. Is the tenant entitled to compensation for the filing fee?

#### Background and Evidence

The landlord's agents testified that the tenancy began in August of 2015. Monthly rent was originally \$2,100.00 with the tenant responsible for 65% of the utilities. Monthly rent was due on the first of the month. According to an excerpt of the written tenancy agreement the tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$250.00

In August 2016, monthly rent was increased to \$2,400.00 in order to absorb an increased amount of utilities. The utility charges were essentially absorbed into the rent. In the middle of 2018—the agents did not have a specific date—the rent increased to \$2,600.00, again absorbing an increased utilities amount. In June or July of 2018 the

tenant started paying rent in chunks, \$1,300.00 on the first of the month and then another \$1,300.00 on the fifteenth. The landlord did not appear to have objected to this manner of payment of the rent. In October 2018, the tenant stopped paying rent.

The agents testified that they served one 10 Day Notice to End Tenancy for Unpaid Rent on the door on November 16, 2018, with an effective end of tenancy date of November 29, 2018. Unpaid rent at that point was \$3,900.00. The tenant during his testimony claimed that he was unaware of this notice.

On December 4, 2018, the landlord's agent served another 10 Day Notice to End Tenancy for Unpaid Rent on the front door of the rental unit. It was taped to the door, and the agents submitted a photograph of the Notice taped to the door. The Notice was inside of a clear plastic protective sheet. At that point, the unpaid rent was \$5,200.00.

As of today's date (January 31, 2019), the tenant is in arrears for unpaid rent for October 2018 to January 2019, inclusive, in the amount of \$9,100.00. In closing, the agent testified that they have never received any written requests for repairs (emergency or otherwise) and they have not received any receipts for any repairs.

The tenant testified about the early days of the tenancy, and how, until very recently, he dealt almost exclusively with the landlord's husband. Effectively, the landlord's husband was her agent. All communication between the tenant and the landlord's husband was either in-person or over the phone. He commented that neither he nor the landlord's husband liked doing paperwork. The tenant testified that there a litany of issues with the rental unit, and that the reason he is withholding the rent is because of the repairs that need to be done.

The tenant testified about safety issues with the stove, and its potential burn hazard. (The tenant has four children, the youngest is 1½ years of age and the three older siblings are in school.) The tenant had issues with the fridge and freezer; the freezer seals were deteriorated. The fridge did not work. The freezer would go into defrost mode. There are safety issues with the handrail and bannister, and the landlord was aware of these but did not do anything about it.

There was a leak in the shower, as the seal failed to work. There are drainage issues in the kitchen and bathroom sinks. The dishwasher was not working. There were other plumbing issues that the tenant described, including the dishwasher not draining properly due to odd plumbing. While the landlord apparently knew of the whole host of

issues with the rental unit, the landlord failed to take any steps in addressing the problems. The tenant closed by saying to the landlord's agents that if they fix everything then he will pay the rent.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due, and has not paid rent for November 2018, December 2018, January 2019, and half of October 2018. The tenant did not dispute that he has not paid the rent.

Under the Act, there are only four sections under which a tenant may withhold rent: section 19(2) allows a tenant to withhold rent when a landlord obtains a security deposit in excess of what is permitted; section 43(5) permits a tenant to withhold rent when a rent increase is not in compliance with the Act; and, section 65(1), which allows a tenant to withhold an amount of rent when ordered and authorized by an arbitrator.

The fourth section that permits a tenant to withhold rent is section 33(7). Section 33(5) of the Act reads as follows:

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.

Section 33(7) of the Act reads as follows:

If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case, the tenant has not established or provided any evidence to prove that he had a right under the Act to withhold rent. While the rental unit may need repairs, this fact does not give rise to a right under the Act for the tenant to withhold rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. As such, the tenant's application for an order cancelling the Notice is dismissed without leave to reapply. Further, the tenant's application for compensation for the filing fee is likewise dismissed without leave to reapply.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find the Notice issued by the landlord on December 4, 2018, complies with the requirements set out in section 52. Therefore, I hereby issue an order of possession for the landlord.

As this was not the landlord's application for an order for compensation, I do not make any such order. The landlord is at liberty to apply for compensation against the tenant by of a separate application for dispute resolution.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: January 31, 2019

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Residential Tenancy Branch