



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1065423 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR ERP MNRT OLC PSF 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 the following remedies:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46 of the Act;
2. an order for the landlord to make emergency repairs, pursuant to sections 32 and 62(3) of the Act;
3. an order for the landlord to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act;
4. an order for the landlord to provide heat as required by the tenancy agreement, pursuant to section 62 of the Act;
5. an order to reduce rent for heat not being provided as required by the tenancy agreement, pursuant to section 65 of the Act; and,
6. compensation for the cost of emergency repairs, pursuant to sections 33(5) and 67 of the Act.

A dispute resolution hearing was convened and the landlord, a witness for the landlord, and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding service of documents or evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

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: Heat in the Rental Unit

The parties testified and confirmed that the heat is now on in the rental unit. As such, the application for orders related to heat are now moot. Therefore, I dismiss the above-noted claims 2 through 4, inclusive, without leave to reapply.

#### Preliminary Issue: Compensation for Cost of Emergency Repairs

The tenant submitted no documentary evidence, such as a receipt, to establish any outlay of money in the amount of \$300.00 for costs related to, or for, emergency repairs. As such, I dismiss this aspect of the claim without 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?
3. Is the tenant entitled to an order to reduce rent for heat not being provided as required by the tenancy agreement?

#### Background and Evidence

The landlord testified that the tenancy started approximately three or more years ago, and that the monthly rent, which is due on the first of the month, is \$650.00. There is no security or pet damage deposit, and there is no written tenancy agreement submitted into evidence.

The landlord testified that he served the Notice on the tenant's door on February 2, 2019. The Notice indicated that the tenant owed \$925.00 in unpaid rent. He explained that the tenant paid January 2019's rent but no February's rent. The tenant has paid rent for March 2019, but only \$600.00, and not \$650.00. A copy of the Notice was submitted into evidence.

The tenant disputed the landlord's testimony regarding the amount owing, saying that he did pay all of the rent for December 2018. He testified that he only paid \$600.00 in

rent for February 2019, and withheld part of the rent because of the landlord's failure to repair the heat. The tenant submitted into evidence copies of the rent receipts, including a receipt for \$600.00 for rent received February 6, 2019. Also included was a rent receipt for \$325.00 for rent received January 14, 2019.

The tenant testified that he, and his neighbours, were without heat for four months, and that efforts to get it fixed by the landlord were rather unsuccessful. Eventually, the landlord repaired the heat, only for it to stop working after two days. Finally, the landlord repaired the heat and there is currently heat in the rental unit.

The parties also provided additional testimony regarding a fire, though this is not particularly relevant to the issues in this dispute.

### 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.

### **Order to Cancel Notice**

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds 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. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified that the tenant did not pay the full rent when it was due. The tenant also testified (and provided documentary evidence to this effect) that he did not pay the full rent and withheld some of the rent because of the landlord's failure to provide heat.

Under the Act there are only four reasons why a tenant has a right to deduct some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, section 33(7) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

In this case, the tenant's reason for withholding rent does not fall under any of the above-listed exceptions. He was required to pay the rent in full and on time. He did not.

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 established the ground on which the Notice was issued.

As the landlord has met their onus of proving the ground on which they issued the Notice, I dismiss the tenant's application for an order cancelling the Notice without leave to reapply. The Notice, dated February 2, 2019, is upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. I find the Notice complies with the requirements set out in Section 52.

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.

Given the above, I grant the landlord an order of possession of the rental unit.

### **Compensation and Reduction of Rent for Loss of Heat**

I sympathize with the tenant: no one should have to suffer through month after month of not having any heat, especially during a particularly cold winter. However, a tenant has options under the Act, such as applying for a rent reduction in future rent for services or facilities not provided. The tenant chose to unilaterally, and without legal right, to withhold—basically, to reduce—rent for heat not being provided. A landlord is legally required to provide heat if included in the rent (and the landlord did not dispute that heat is included), but a tenant cannot simply withhold rent if heat is not provided.

In this case, I find that the tenant is entitled to compensation for the loss of heat. However, given that the tenant has already compensated himself by withholding \$50.00 from February's rent and \$50.00 from March's rent, that is the amount of compensation that I shall grant and to which the tenant is entitled. As such, the landlord does not have any future claim for these two amounts for February and March 2019.

### **Conclusion**

I grant the landlord an order of possession, which must be served on the tenant no later than March 28, 2019, and which is effective March 31, 2019. 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: March 15, 2019

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Residential Tenancy Branch