



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, OT

### Introduction

On January 18, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking an Emergency Repair Order pursuant to Section 62 of the *Act*.

The Tenants attended the hearing with T.B as their advocate. The Landlord attended the hearing as well. All parties provided a solemn affirmation.

Tenant D.A. advised that he served the Landlord with the Notice of Hearing package and evidence by posting it to the Landlord’s door on January 22, 2019. The Landlord confirmed that he received this package. While this method of service did not comply with Section 89 of the *Act*, as the Landlord received this package and was prepared to continue, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

The Landlord advised that he did not serve any evidence to the Tenant or submit any evidence to the Residential Tenancy Branch for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to an emergency repair order?
- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on July 1, 2018 and rent was established at \$1,200.00 per month, due on the first day of each month. The Tenants did not pay a security deposit.

The Landlord submitted that the Tenants had been in arrears of \$300.00 a month since September 2018. He stated that he served the Notice to the Tenants by hand on January 14, 2019 which indicated that \$1,200.00 was outstanding on January 1, 2019. The Tenants confirmed that they received the Notice. He also stated that the Tenants were in arrears \$300.00 for December 2018 rent and they had not paid January, February, or March 2019 either. The Notice indicated that the effective end date of the Notice was January 24, 2019.

T.B. stated that she was a private investigator and that she had been providing her advice to the Tenants. She outlined Tenant M.V.'s health issues, she testified about a vent that was cut in the bathroom that prevented methane from being removed, and she discussed outdoor sewage environmental issues. She stated that these issues had been happening since July 2018 and in order to have these issues dealt with, she advised the Tenants to withhold the rent to "hit the Landlord in the pocketbook". She confirmed that the Tenants had withheld \$300.00 from December 2018 rent and that they had not paid January, February, or March 2019 rent at all. During the hearing, T.B. was asked if she was familiar with Section 33 of the *Act* with respect to managing a potential emergency repair and she stated that she was not familiar with these provisions of the *Act*.

At 9:59 AM, Tenant D.A. was overheard saying to T.B. that their "phone was about to die" and approximately a minute later, the Tenants exited the conference call. The hearing continued until 10:11 AM; however, the Tenants did not dial back into the hearing.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 33 of the *Act* outlines the Landlord's and Tenants' duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **Emergency repairs**

**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...**

**(3)** A tenant may have emergency repairs made only when all of the following conditions are met:

**(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.**

**(5)** 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.**

**(7) 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.**

Other than simply stating that there were some issues that may have fallen under the definition of “emergency repairs” under the *Act*, the Tenants have not provided any evidence to substantiate that the “emergency repairs” sought constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit. Furthermore, there is no evidence before me that the Tenants followed the steps in subsection (3) to have these issues dealt with, that they undertook any repairs themselves, or that they paid someone to have the repairs completed. Furthermore, T.B. confirmed that her advice to the Tenants for an appropriate remedy was for them to withhold the rent.

When reviewing the testimony provided, I am not satisfied from the scant evidence submitted that there was an issue that constituted an emergency repair. In addition, I am not satisfied that if there was an emergency repair, that the Tenants complied with Section 33 of the *Act* with respect to paying for any repairs and then withholding an equivalent amount of the rent. As such, I do not find that the Tenants were entitled to deduct any amount from rent, and I dismiss this portion of their Application in its entirety.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants received the Notice on January 14, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that “*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is*

*conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day fell on Saturday January 19, 2019, the Tenants must have paid the rent by this day or made their Application by January 21, 2019 at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants receiving the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

#### Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlord **two days after service of this Order** 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: March 7, 2019

---

Residential Tenancy Branch