



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

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 March 31, 2019.
- b. An order for emergency repairs
- c. An order for repairs
- d. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- e. 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.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 Notice to End Tenancy was personally served on the Tenant on March 31, 2019. 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 April 9, 2019. 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 cancelling the 10 day Notice to End Tenancy dated March 31, 2019?
- b. Whether the tenants are entitled to an order for emergency repairs?
- c. Whether the tenants are entitled to a repair order?
- d. Whether the tenants are entitled to an order that that the landlord comply with the Act, Regulations and/or tenancy agreement.?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 6, 2018. The written tenancy agreement provided that the tenant(s) would pay rent of \$1800 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$900 on August 6, 2018.

The landlord testified that the tenants failed to pay the rent for March 2019 and the sum of \$1800 was owed. In addition they failed to pay the rent for the months of April 2019 and May 2019 and a further \$3600 is owed.

The tenants testified they withheld the rent because the landlord failed to clean mold when they asked him to do so.

Analysis:

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

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.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. The Tenants owed \$1800 in outstanding rent when the Notice to End Tenancy was served on them. They failed to pay the rent within the 5 days that would void the Notice. The landlord used the approved government form. Section 26(1) provides that the tenants must pay the rent when due even if the landlord failed to comply with the Act unless they first obtained an order from an arbitrator to withhold the rent. The tenants did not have a legal right to withhold the rent. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

As the tenancy is coming to an end I further order that all of the remaining claims in the Application for Dispute Resolution be dismissed without liberty to re-apply.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order of Possession. I set the effective date for the Order of Possession for May 26, 2019.

The tenants must be served with this Order as soon as possible. Should the tenant 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.

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: May 23, 2019

Residential Tenancy Branch