



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, ERP, MNDCT, RR, FFT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 24, 2018
- b. An order for emergency repairs
- c. A repair order
- d. A order for a monetary order in the sum of \$3350.
- e. An order for the return of the security deposit
- f. 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 one month Notice to End Tenancy was served on the Tenant by posting on July 24, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by mailing, by registered mail to where the landlord resides as the landlord acknowledged receipt of the documents.

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated July 24, 2018?
- b. Whether the tenant is entitled to an order for emergency repairs and repairs?
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on December 16, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1450 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

The landlord served a one month Notice to End Tenancy on the Tenant for repeated late payment of rent non-payment of rent by posting on July 24, 2018.

The parties are in a dispute over the presence of mould in the rental unit. The tenant testified she paid \$400 of the rent for August 2018 and submitted a bill to the landlord for the presence of the mould. Section 26(1) of the 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.

The landlord applied for and was successful in obtaining an Order of Possession for the failure of the Tenant to pay the full rent for August 2018. The landlord obtained a Writ of Possession from the Supreme Court.

After introductions the parties advised me that the bailiffs were at the rental unit at that moment executing on the Writ of Possession and removing the Tenant's belongings..

Tenant's Application to Cancel the one Month Notice to End Tenancy Tenant's Application for Repairs and Emergency Repairs:

I determined that as the tenancy was coming to an end that the tenant's application to cancel the one month Notice to End Tenancy and the application for repairs and emergency repairs was moot. As a result I dismissed those claims.

Tenant's Application for a Monetary Order:

I determined it was not appropriate to hear the tenant's application for a monetary order at that time as the Bailiff's were present and were moving the tenant's belongings at that time. Further the tenant stated she believed she had additional claims including a claim for the proportionate portion of the rent for September.

I ordered that the Tenant's application for a monetary order be dismissed with liberty to re-apply. I dismissed the Tenant's claim to recover the cost of the filing fee.

The landlord would also have a right to file claims and those matters would be heard (hopefully at the same time) some time in the future.

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: September 20, 2018

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Residential Tenancy Branch