



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNL, MNDC, FF

## Introduction

This is an application by the tenant for the following:

- An order to cancel a notice to end tenancy for landlord use of property.
- A monetary order for compensation for improvements made to the rental property
- A monetary order to recover the filing fee for the cost of this application

## Issue(s) to be Decided

- Does the landlord have the all the necessary permits and approvals required by law, to demolish the rental unit?
- Is the tenant entitled to compensation for improvements made to the rental property?
- Is the tenant entitled to recover the filing fee for the cost of this application?

## Background and Evidence

The tenant applied for an Order to set aside a Notice to end the residential tenancy, dated and served July 29, 2008, and has an effective date of September 30, 2008.

This tenancy started in June 2003 with rent of \$500.00 due in advance on the 1st of each month. The rental unit was occupied by the tenant and his roommate who has since moved out. The tenant was represented at the hearing, by his current roommate who moved into the rental unit in 2006.

Re Landlord use of property, the landlord has submitted into evidence, an application for a permit to demolish the rental unit dated July 05, 2008 and an approval for this permit, from the City of Kent, Agassiz dated July 16, 2008. Subsequently, the landlord served the two month notice to end tenancy on July 29, 2008 effective September 30, 2008. As per section 49 (6) (a) of the *Residential Tenancy Act*, the landlord may end tenancy if he has all the necessary permits and approvals required by law, and intends in good faith to demolish the rental unit.

The landlord stated in his affirmed testimony that the property was rented to the tenant on a month to month basis. The property was in poor condition at the time the tenant moved in and he agreed to rent "as is". Accordingly, the rent was set at \$ 500.00 per month for the home, shop and farm and the landlord did not request a rent increase during the term of the tenancy. The landlord stated that he did not make any arrangements with the tenant for the upgrade of the home but he agreed to pay for the plumbing and heating repairs.

The roommate of the tenant stated in her affirmed testimony that she moved into the unit in 2006 and all the repairs and upgrades to the rental unit were already done. She was not present at the time the tenancy started and hence could not give testimony regarding the arrangements that were made between the landlord and the tenant with respect to the length of the lease or upgrading the unit. The tenant submitted into evidence receipts and before and after photographs of the updates and has made a claim for \$25,000.00. Some receipts date back to 2002 and are not relevant to the tenancy that began in June 2003. The tenant has submitted confirmation that one plumbing bill in the amount of \$750.00 was paid by the tenant and the landlord did not dispute this. The tenant confirmed that the landlord has not received rent since May 2008.

### Analysis

The oral and written submissions of the parties have been considered, as well as the photographs and receipts submitted by the tenant and the permits and invoices submitted by the landlord. Based on the information before me:

With respect to the tenant's application for compensation, Section 67 of the Act allows either a landlord or a tenant to make a claim against the other. The claim may be for payment of a debt, or for an award of damages. The claim must result from a failure to live up to the terms of a tenancy agreement or the Act. The burden of proof rests with the one who makes the claim, to show not only that they are owed a debt or have suffered damages, but that this is the result of action (or inaction) by the other party.

The tenant has not established that she is entitled to the award sought. The application under section 67 is dismissed. The tenant has not paid rent since May 2008 and the landlord is not making a claim for rent owed. Hence, I will not order the landlord to pay \$750.00 for plumbing repairs, as the tenant has received compensation well over her entitlement to one month's rent as per section 51 (1) of the *Residential Tenancy Act*.

I also find that the tenant is not entitled to the cost of filing this application.

With respect to the notice to end tenancy, I find that the landlord has established grounds to end the tenancy and hence the Notice is not aside. The landlord agreed to extend the effective date of the Notice and hence the tenancy will end on October 31, 2008, subject to the tenant's right to give a ten-day written notice for an earlier date as set out in section 50 of the *Act*.

### Conclusion

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Accordingly, I so order. The tenant must be served with the order of possession with an effective date of October 31, 2008. Should the tenant fail to comply with the order, the

order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

September 8, 2008  
Date of Decision