



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR MNR MNSD CNR RR FF O

## Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for unpaid rent and an order for a reduction in rent and an application by the landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both tenants and both landlords attended and gave affirmed testimony in the teleconference hearing.

The tenants submitted some evidence that they failed to serve on the landlords. I did not admit or consider in my decision any of the tenants' documentary or photographic evidence that they did not serve on the landlords. The documentary evidence of the tenants that was admissible fell under the tabs of "Listing," "Utilities" and "Receipts."

## Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the landlords entitled to the monetary amounts claimed?

Are the tenants entitled to a reduction in rent or other monetary compensation?

## Background and Evidence

The tenancy began on December 1, 2008 as a fixed term tenancy expiring on June 30, 2009. Rent in the amount of \$2900 is payable in advance on the first day of each month. On November 17, 2008, the landlords collected a security deposit from the tenants in the amount of \$1450.

The submission of the tenants was as follows. The landlords did not arrange for a

move-in inspection with the tenants. Shortly after moving into the rental unit, the tenants discovered problems with the water and heat. The tenants informed the landlords of the problems, but the landlords were slow to respond. The tenants did work to try to sort out the water problems and keep the landlords apprised on a daily basis of the condition of their water. The tenants acknowledged in the hearing that they did not have verbal or written authorization to do work on the rental unit, but they were doing what needed to be done.

The tenants did not pay rent for January 2009 and on January 6, 2009 the landlords served the tenants with a notice to end tenancy for non-payment of rent. The landlords and the tenants came to an agreement that the tenants would not have to pay any rent for January, and that they would only have to pay prorated rent for February 11 to 28, in the amount of \$1864.29.

The tenants were not satisfied that the problems with the water and heat had been resolved, and they did not make a rent payment on February 11, 2009. On February 13, 2009 the landlords served the tenants with a second notice to end tenancy for unpaid rent. That notice indicated that the tenants owed \$1864.29, due on February 11, 2009. The tenants acknowledged that they have not made any rent payments since December 1, 2008, but stated that they have not paid the rent because the landlords have not adequately completed repairs.

The tenants applied for a reduction in rent as follows: they seek an order that the \$2900 that they paid for December 2008 be the full amount of rent for December 1, 2008 through March 31, 2009, on the basis that there were huge deficiencies in the heating and water systems which the landlords failed to disclose, amounting to fraud, and that the tenants are entitled to compensation for the poor conditions they endured, the poor response of the landlords to the problems, the additional electrical and heating costs the tenants incurred as a result of the water and heating problems, and the value that the tenants added to the rental unit through the work they did.

### Analysis

In regard to the notice to end tenancy for non-payment of rent, I find as follows. The tenants were served with the notice and did not subsequently pay the outstanding rent. The tenants were not entitled to withhold the rent. I find that the notice to end tenancy is valid, and the landlords are entitled to an order of possession.

In regard to the landlords' monetary claim, I find that the landlords are entitled to the amounts claimed of \$1864.29 for prorated rent for February 2009 and \$2900 for March 2009. The landlords' claim for loss of revenue for April 2009 is premature, and I therefore dismiss that portion of their application with leave to reapply. The landlords are entitled to recovery of their \$100 filing fee, for a total of \$4864.29.

In regard to the tenants' application for a reduction in rent or other monetary compensation, I find that the landlords more than adequately compensated the tenants by not pursuing the rent for January or the first 10 days of February. The tenants did not have authorization to conduct work on the rental unit, in lieu of rent or otherwise, and they may not seek further compensation on that basis. I find that the landlords responded in as timely a manner as possible to address problems in the rental unit, and I am satisfied with the evidence of the landlords that the water problems have been rectified. I find no basis for the tenants' claims of fraud by the landlords.

I need not make an order for a reduction in rent for January and February 2009 as the landlords already acknowledged those deductions by not including the amounts for January 2009 and February 1 to 9, 2009 in either the 10 day notice to end tenancy issued on February 11, 2009 or in their application. The landlord may not re-apply for those amounts in any case, as doing so would amount to splitting their claim.

### Conclusion

The tenants' application is dismissed. The tenants are not entitled to recovery of the filing fee for the cost of their application.

I grant the landlords an order of possession, effective two days after service. The tenants must be served with the order of possession. Should the tenants 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.

I order that the landlord retain the deposit and interest of \$1452.67 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3411.62. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 30, 2009.