



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, MNDC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* and for monetary compensation repairs and maintenance allegedly performed at the rental unit. Both parties appeared at the hearing and confirmed receipt of the other parties' evidence. Both parties were provided the opportunity to be heard and to respond to the other parties' submissions.

### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy?
2. Has the tenant established an entitlement to compensation under the Act?
3. Award of the filing fee.
4. Order of Possession for the landlord.

### Background and Evidence

Upon hearing testimony of both parties, I make the following findings. The parties signed a tenancy agreement on December 23, 2009 with a commencement date of January 15, 2009. The parties agreed to pay rent of \$2,500.00 on the 1<sup>st</sup> day of the month with January 2009 being pro-rated to reflect a partial month. The tenants provided a cheque for the security deposit and post-dated rent cheques that were written on a bank account that was closed when the landlord attempted to cash the cheques. The tenants have not paid any monies to the landlord for rent. Rather, the landlord hired the tenant to perform certain renovation projects to the landlord's personal residence.

The landlord submitted that the landlord paid the tenant and credited the tenant's rent ledger with the following amounts:

Hardwood flooring: based on \$2.00 per square foot the landlord paid the tenant \$1,000.00 and credited \$1,033.46 towards rent owed;

Kitchen: based on agreement of \$8,000.00 for renovation the landlord paid the tenant \$3,500.00 and credited \$4,500.00 towards rent owed;

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Travertine Floor: based on agreement of \$10.00 per square foot, credited \$1,520.50 towards rent owed;

Microwave vent, stove plug and plumbing: credited \$479.50 towards rent owed; and

Laundry room counter and brackets: paid tenant \$300.00.

In accordance with the above, the landlord calculates that the tenants' ledger was credited a total of \$7,533.46 for work performed on the landlord's personal residence. which satisfied three months of rent payments starting January 15, 2009. The landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on July 22, 2009 indicating rent of \$2,500.00 was outstanding as of June 1, 2009. The tenants did not pay the outstanding rent and chose to dispute the Notice.

The tenants acknowledged that they had not paid the landlord any monies for rent or security deposit other than writing the cheques to the landlord that could not be cashed. The tenants agreed that the tenant had performed work for the landlord at the landlord's personal residence. However, the tenants' dispute was that the parties had agreed upon amounts other than that submitted by the landlord. For example, I heard the price agreed for the hardwood flooring was supposed to be based on \$2.50 per square foot as opposed to \$2.00 per square foot. The tenant also submitted estimates pertaining to the value of the work performed in the landlord's kitchen in an attempt to refute the landlord's claim that the kitchen renovation was to be done for \$8,000.00.

It was clear that the parties could not agree on the amounts that should be paid or credited to the rent owed by the tenants. I refused to hear more details concerning the quality of work performed, the value of the work performed or the amount owing for the work performed. Rather, I found that the parties entered into separate contracts that fall outside of their tenancy agreement and I do not have jurisdiction to settle or determine the amount owing the tenant for renovation work, if any. The parties were informed that their recourse for disputes concerning the renovations to the landlord's personal residence would fall under the jurisdiction of the Provincial Court (Small Claims).

The tenants' application also included a claim of \$6,800.00 for repairs and maintenance allegedly performed at the rental unit. The landlord testified that he did not authorize or agree to pay the tenant for any work done at the rental unit that the tenant is claiming, if any repairs were performed. The tenant did not provide evidence that the landlord had requested, authorized or agreed to pay the tenant for any work performed at the rental unit. The nature of the repairs and maintenance alleged performed by the tenant at the rental unit pertained to the outside pool, yard work and irrigation and minor plumbing.

## Analysis

When a tenant receives a 10 Day Notice, the tenant has five days to either pay the outstanding rent or dispute the Notice. In this case, the tenants disputed the Notice and did not pay the outstanding rent as indicated on the Notice. Where a tenant disputes the Notice, the tenant must be able show that the rent in fact had been paid, the tenant had the legal right to withhold rent under the Act or that the rent was not outstanding when the Notice was issued.

Section 26 of the Act requires a tenant to pay rent when due under the terms of the tenancy agreement. A legal right to withhold or reduce rent would be in the form of consent by the landlord or upon the direction of a Dispute Resolution Officer. The evidence is clear that rent owing under the tenancy agreement was \$2,500.00 per month and that the tenants did not pay the landlord any monies towards the rent owed. There is insufficient evidence to find the tenant had the landlord's consent to withhold rent and the tenant did not have authorization to withhold rent from a Dispute Resolution Officer.

The tenants' position rested solely on the assertion that the landlord owed the tenant money for work performed on the landlord's personal residence. However, even if the landlord owed the tenant money for renovation work on the landlord's personal residence the tenant does not have the legal right to withhold any such funds from rent. Rather, the tenants were required to pay rent and request payment for the renovations from the landlord and if the parties were in dispute as to the renovation contracts, the parties could pursue the matter in Provincial Court.

Based on the above, I find no basis to set aside the 10 Day Notice to End Tenancy. Since the landlord clearly indicated the rental unit needs to be vacated as soon as possible in order to mitigate losses already incurred, I provide the landlord with an Order of Possession pursuant to section 55 of the Act. The Order of Possession must be served upon the tenants and is effective two (2) days after it is served. The Order of Possession may be enforced in the Supreme Court of British Columbia as an order of that court.

With respect to the tenants' claim for compensation, I find no basis under the Act to award the tenant for repairs and maintenance the tenant undertook, if any. As the tenants were informed at the hearing, where repairs are required to a rental unit, the tenant should notify the landlord and provide the landlord the opportunity to remedy the situation. If repairs are not done and are required in order to comply with health and safety standards and building laws that make the dwelling inhabitable, the tenant's recourse is to make an Application for Dispute Resolution and make a request for repair



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orders. A tenant is only entitled to recover costs incurred for “emergency repairs”. Emergency repairs is a term defined by the Act and I do not find the type of alleged repairs performed by the tenants to have met the definition of emergency repairs. Therefore, I dismiss the tenant’s claims for repairs and maintenance to the rental unit without leave to reapply.

As the tenants’ application was unsuccessful, I do not award the filing fee to the tenants.

## Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided with an Order of Possession effective two days after service upon the tenants.

The tenants’ requests for compensation have been dismissed without leave to reapply.

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 17, 2009.

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Dispute Resolution Officer