



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, CNR, MNR, ERP, RP, OLC, PSF, RR, FF, O

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent dated November 4, 2009, for an order requiring the Landlord to comply with the Act by making emergency repairs or general repairs and to provide facilities or services agreed to as well as a monetary order for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

On November 5, 2009, one of the Tenants amended her application to cancel the Notice to End Tenancy for Unpaid Rent. The Tenants first claimed that they could not recall when they served the Landlord with their amended Application and then said that they served it by regular mail on November 5, 2009. The Landlord said he did not receive a copy of the Tenants' amended application.

The Tenants claimed that they only received a copy of the Landlord's application in this matter on November 23, 2009. The Landlord filed his application on November 16, 2009 and received hearing packages on November 17, 2009. According to the Canada Post tracking number provided by the Landlord, the hearing package(s) was sent to the Tenants by registered mail on November 19, 2009.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are repairs required to the rental unit?
4. Are the Tenants entitled to compensation and if so, how much?

### Background and Evidence

This month to month tenancy started on September 1, 2009. Rent is \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. According to the tenancy

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agreement, storage and utilities are included in the rent. The Tenants paid a security deposit of \$350.00 on August 25, 2009.

The Landlord said that the Tenants did not pay November 2009 rent when it was due and as a result, on November 4, 2009, he served the Tenants in person with a 10 Day Notice to End Tenancy. The Landlord said that the Tenants have not paid anything since they were served with the Notice.

## Analysis

I find that the Tenants did not serve the Landlord with a copy of their amended application as required under s. 89 of the Act and as a result ***their application to cancel the 10 Day Notice is dismissed on this ground.*** I also find that the Tenants are not prejudiced by the Landlord's late application for an Order of Possession as the Landlord could have verbally requested one at this hearing under s. 55(1) of the Act without having filed an application.

Even if I allowed the Tenants' amended application to cancel the Notice to End Tenancy for Unpaid Rent, I find for the following reasons that it would be dismissed. The Tenants argued that they did not pay rent for November 2009 because they made emergency repairs. In particular, the Tenants claimed that they advised the Landlord that there was a leak in the roof of a storage room/office that the Tenants were using as a bedroom. The Tenants said the Landlord looked at the leak on October 17, 2009 but advised them that he did not have the money to fix it. The Tenants claim that the ceiling started coming down two days later so on or about October 27, 2009, they paid a friend \$500.00 to remove part of the ceiling. The Tenants claimed that they did not have a receipt for this repair and admitted that they did not pay the balance of the rent (\$200.00) for November 2009. The Landlord argued that this storage room was not rented to the Tenants under the tenancy agreement.

Section 46(4) of the Act says that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. Although the Tenants applied to dispute the 10 Day Notice within the time limits under the Act, I find that there are no grounds for their application because even if the Tenants did pay for emergency repairs as they claim (and I make no finding in that regard), there would still be an amount outstanding of \$200.00 for November 2009 rent.

Consequently, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants. The



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balance of the Parties' respective applications will be adjourned to a reconvened hearing.

## Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenants has been issued to the Landlord. The Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia. The Landlord's and Tenants' respective applications for compensation are adjourned to a reconvened hearing to be held on **January 11, 2009 at 1:30 p.m.**

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: November 26, 2009.

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Dispute Resolution Officer