

## DECISION

Dispute Codes      OPR, MNR, FF  
                         CNR, ERP, PSF, RR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2010, for an Order that the Landlord make emergency repairs and provide services and facilities required by law. The Tenant also applied for compensation due to the Landlord's failure to make repairs and provide services and facilities and for a rent reduction until such repairs were made or facilities restored. The Tenant further applied to recover the filing fee for this proceeding.

At the beginning of the hearing an agent for V.E.S. sought to amend the Landlord's application by adding V.E.S. as a Landlord. The Agent for V.E.S. admitted that she had not provided a written authorization from the Landlord to amend his application as she claimed that V.E.S. had just been hired on **May 14, 2010** to act for the Landlord in this matter. The Agent for the Landlord later submitted a "Letter of Authorization" dated **March 14, 2010** which has an illegible signature, no indication of whom it is signed by, and incorrect file number and a misspelled given name for the Tenant. The Letter of Authorization also does not authorize V.E.S. to amend the pleadings in this matter. Given the number of deficiencies with the Letter of Authorization submitted by V.E.S., I dismiss its application to amend the pleadings in this matter.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Are emergency repairs necessary?
4. Is the Tenant entitled to compensation and if so, how much?
5. Is the Tenant entitled to a rent reduction?

### Background and Evidence

This fixed term tenancy started on November 20, 2009 and expires on May 31, 2010. Rent is \$1,000.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Parties agree that the Tenant has rent arrears as follows:

February 2010:	\$30.00
March 2010:	\$100.00
April 2010:	\$1,000.00

May 2010:	<u>\$1,000.00</u>
TOTAL:	\$2,130.00

The Parties also agree that on May 2, 2010, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2010 by posting it to her door. The Parties further agree that the Tenant has not paid the rent arrears of \$2,130.00 indicated on the Notice.

The Tenant said she has not paid rent because she believes that the Landlord owes her compensation for a furnace that is in a state of disrepair. In particular, the Tenant said when she moved in she thought she could smell gas but the Landlord told her that the furnace had been regularly serviced by a licensed technician. The Tenant said that on the Easter week end, however, an agent of Terasen gas attended the rental unit because a neighbour complained about a smell of gas coming from the rental property. The Tenant claimed that after finding a high reading on the rental property, the Terasen gas agent turned the furnace off and told her to keep it off until the furnace was repaired. The Tenant said she was without heat for two weeks while the Landlord had repair people in to inspect it and found that it had not been recently serviced. The Tenant claims that the furnace has not been repaired and due to its age and condition needs to be replaced. The Landlord claims that the furnace has been repaired.

The Tenant also claimed that at the end of April 2010 the fire department turned the power off in the rental unit until it could be inspected by an electrician and deemed suitable for use. The Tenant admitted that she does not have an Order from the Residential Tenancy Branch permitting her to withhold her rent nor did she pay to have emergency repairs performed.

### Analysis

Section 46(3) of the Act states that a 10 Day Notice has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the Act to deduct from rent.

Section 33(7) of the Act says that if a Tenant pays for emergency repairs (as defined under sub-section 33(1)) and provides the receipts to the Landlord but the Landlord does not reimburse the Tenant for them, the Tenant may deduct the amount of the emergency repairs from the rent. Sections 65 and 72 of the Act also authorize the Director to make an Order permitting a tenant to deduct a compensation award from their rent.

Section 46(4) of the Act states that if a Tenant pays overdue rent **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, the Notice is cancelled.

Consequently, if a Tenant does not pay the overdue rent within 5 days as provided under s. 46(3), or pay for emergency repairs as provided under s. 33 or does not already have an Order from the Director permitting them to withhold their rent as provided under s. 65 or 72, then under section 46(5) of the Act, the Tenant is

conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant has not paid the overdue rent, has not paid for emergency repairs and does not have an Order from the Residential Tenancy Branch permitting her to withhold her rent. Consequently, I find that there are no grounds for the Tenant's application to cancel the 10 Day Notice dated May 2, 2010 and it is dismissed without leave to reapply. Accordingly, I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect on May 24, 2010 at 1:00 p.m. I also find that the Landlord is entitled to recover rent arrears in the amount of \$2,130.00 as well as the \$50.00 filing fee for this proceeding.

As the tenancy is ending, the Tenant's application(s) for emergency repairs, for the Landlord to provide services and facilities and for a rent reduction are dismissed without leave to reapply. I find that the Tenant's application for compensation for damage or loss under the Act or tenancy agreement is premature and it is dismissed with leave to reapply. As the Tenant has been unsuccessful in this matter, her application to recover the filing fee for this proceeding is dismissed without leave to reapply.

### Conclusion

An Order of Possession effective May 24, 2010 at 1:00 p.m. and a monetary order in the amount of **\$2,180.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia. 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: May 17, 2010.

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Dispute Resolution Officer