

## **DECISION**

Dispute Codes      CNR, MNDC, RR, O

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other orders the tenants requested regarding the remainder of this tenancy if this tenancy were to continue.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent by placing it under the tenants' door on October 20, 2010. The tenants confirmed having received this notice on October 22, 2010. The tenants testified that they sent the landlords a copy of their application for dispute resolution hearing package by registered mail on October 28, 2010. They provided the Canada Post Tracking Numbers to confirm this mailing. The tenants confirmed receiving the tenants' application for dispute resolution hearing package. I accept that these documents were duly served to one another and that the parties had a proper opportunity to know the case against them and to make arguments to support their respective positions.

At the hearing, the landlord made an oral request for an Order of Possession if the tenants' application to cancel the Notice to End Tenancy for Unpaid Rent were dismissed.

Issues(s) to be Decided

Should the landlords' Notice to End Tenancy be cancelled? Should the landlords be issued an Order of Possession? Are the tenants entitled to a monetary Order for loss under the *Act*, regulation or tenancy agreement resulting from this tenancy? Are the tenants entitled to a reduction in their rent for services or facilities agreed upon but not provided by the landlords?

Background and Evidence

This tenancy commenced by way of a series of one-year fixed term tenancy agreements on June 1, 2008. Each year since then, the parties entered into a new one-year fixed term tenancy agreement for a monthly rent of \$2,500.00, payable on the first of each month. The present agreement is scheduled to end on May 31, 2011. The landlords continue to hold the tenants' \$1,250.00 tenancy agreement paid on April 9, 2008.

The landlords testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent of \$6,750.00 on October 20, 2010. They gave sworn testimony that this unpaid rent was calculated as follows:

<b>Item</b>	<b>Amount</b>
Unpaid August 2010 Rent	\$1,750.00
Unpaid September 2010 Rent	2,500.00
Unpaid October 2010 Rent	2,500.00
<b>Total Unpaid Rent - October 20, 2010</b>	<b>\$6,750.00</b>

The landlords testified that they did not receive any additional rent from the tenants during the five day period following service of the October 20, 2010 notice to the tenants. They testified that they received two cheques from the tenants on October 29, 2010 for \$1,750.00 and \$1,250.00 which they applied to the rent owing. They also testified that they received a November 4, 2010 cheque from the tenants for \$1,000.00. They maintained that as of the date of the hearing, the tenants continued to owe rent of \$5,250.00.

The tenants testified that the landlords are incorrect in their calculations of the amount owing from this tenancy. They said that the landlords have never issued proper rent receipts and that the landlords' records do not accurately reflect payments they have made during this tenancy. The male tenant testified that the landlords underestimated the amount of the tenants' rental payments by the monetary equivalent of six to eight weeks. They entered written evidence of recent bank drafts/cheques they issued to the landlord over the past several months.

The tenants also entered written and oral evidence to support their claim for a monetary award of \$25,000 for their loss of quiet enjoyment due to the noise, pollution and disruption resulting from constant construction around their building over the duration of their tenancy. They also submitted DVD evidence which they said chronicled their claim. Although I was able to view the images on this evidence, I could not hear the audio portion and the tenants did not provide their own equipment to consider this evidence, as set out in the Residential Tenancy Branch Rules of Procedure. I advised the landlords that I was prepared to accept the tenants' claim that the DVD evidence would support their assertion that the construction on nearby properties around their building was very noisy. The landlords did not dispute my acceptance of this evidence on that basis.

### Analysis

#### 10 Day Notice to End Tenancy & Order of Possession

The parties presented conflicting evidence regarding the amount of unpaid rent owing when the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent on October 20, 2010. Although the tenants applied for dispute resolution within the five day period for doing so, their written and oral evidence confirmed that they did not pay the rent then owing within five days of receiving the landlords' notice. The "Debit Narrative" on their October 28, 2010 bank draft settlement of \$1,250.00 indicated that this payment was "In partial payment of rent due October 1, 2010." The Debit Narrative for their November 3, 2010 bank draft settlement indicated that this payment was for the "2<sup>nd</sup> Installment October 2010 Rent." The male tenant gave sworn oral testimony that

\$250.00 of their October rent was still owing as of November 4, 2010. The landlords testified that \$5,250.00 was owing by that date.

I find that the tenants' own evidence confirmed that they failed to pay the rent that they agree was owing on October 20, 2010 rent within five days of receiving the landlords' notice to end tenancy. Their failure to do so within five days led to the end of this tenancy on the effective date of the notice. I dismiss the tenants' application to cancel the landlords' notice to end tenancy.

The male tenant asked to be given two months to vacate the rental premises if their application to cancel the landlords' notice to end tenancy were dismissed. The landlords asked for an Order of Possession to take effect as soon as possible.

I have taken into account the evidence presented by the parties regarding the timing of the issuance of the Order of Possession and allow the tenants until one o'clock in the afternoon on December 15, 2010 to vacate the rental premises. Should the tenant(s) fail to comply with the Order of Possession I am granting, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

#### Tenants' Application for a Monetary Order

The tenants applied for a retroactive reduction in their rent by \$1,000.00 for each of the past 25 months since they moved into the rental premises. They also asked that their rent be reduced by that amount in the future and that an order be issued preventing the landlord from enforcing certain provisions of their fixed term tenancy agreement.

The landlord noted that the tenants did not raise issues about a rent reduction until the tenants received the notice to end this tenancy. The female landlord noted that the tenants signed two new fixed term tenancy agreements at the expiration of their existing agreements after they clearly were aware of the construction ongoing in their area.

Both tenants testified that they made no enquiries with either the University of British Columbia where the rental premises are situated or the City of Vancouver regarding building plans in the vicinity of the rental premises before they commenced this tenancy agreement. While I do not question that living near several ongoing construction sites was disruptive to the tenants, this does not entitle tenants to retroactive rent reductions from their landlords. I find that the landlords are not responsible for the tenants' loss of quiet enjoyment of the rental premises resulting from building and construction around their rental premises. I dismiss the tenants' application for a monetary Order.

### Conclusion

I dismiss the tenants' application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. In response to the landlord's oral request at the hearing for an Order of Possession, the landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on December 15, 2010. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the tenants' application for a monetary Order, for a reduction in their monthly rent, and all other elements of their application. 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*.