

## **DECISION**

Dispute Codes      CNR, MNDC, OPR, MNR, FF

### Introduction

This hearing dealt with applications for dispute resolution from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on October 28, 2010. The landlord testified that he sent the tenant a copy of his application for dispute resolution by registered mail on November 8, 2010. He provided the Canada Post Tracking Number for this mailing. The tenants confirmed receiving both the notice to end tenancy and the landlord's application for dispute resolution. The male tenant (the tenant) testified that he handed the landlord a copy of his original application for dispute resolution on November 3, 2010. The landlord said that he received this on November 4, 2010. The tenant testified that he sent the landlord the amended application for dispute resolution in which the amount of the monetary award requested was raised from \$5,000.00 to \$25,000.00 by email on November 18, 2010. The landlord confirmed receiving the amended application from the tenants. I am satisfied that the parties served one another with all of the above-noted documents and were given a full opportunity to consider the applications from the other party prior to this hearing.

The landlord testified that he sent the tenants his evidence package before the hearing. The tenants confirmed having received this evidence. The tenants submitted their evidence late and it was received by the Residential Tenancy Branch on November 26, 2010. The landlord said that he has had an opportunity to review the tenants' evidence package. The tenant also sent a fax of a November 24, 2010 doctor's note to the Residential Tenancy Branch and the landlord two days before this hearing. Although I was not able to review this late evidence prior to the hearing, the fax of this doctor's note was received by the Residential Tenancy Branch on November 24, 2010 and was forwarded to me. I have considered this late evidence in the process of making my decision, although I attribute little weight to this evidence.

#### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Which of the parties is entitled to a monetary Order? Is the landlord entitled to recover his filing fee for this application from the tenants?

#### Background and Evidence

This one-year fixed term tenancy commenced on June 1, 2010. Monthly rent is set at \$1,680.00 per month, payable on the first of each month. According to the terms of the tenancy agreement, the tenants were responsible for 60% of the utility costs for this property. The landlord continues to hold the tenants' \$840.00 security deposit plus interest paid on May 19, 2010.

In the landlord's 10 Day Notice to End Tenancy, the landlord requested the payment of \$1,680.00 in unpaid rent for October 2010. The landlord testified that the tenants did not pay their October or November 2010 rent. The landlord's subsequent application for dispute resolution requested a monetary award of \$3,360.00.

The parties agreed that the hydro and gas companies created an account for the tenants for the utility costs for this property. The landlord testified that he did not receive a copy of the tenants' utility bill payments for the previous four months of this

tenancy agreement. The landlord accepted that he remained responsible for 40% of the utility costs that the tenants incurred over this period.

The tenants submitted a detailed breakdown of their amended application for a \$25,000.00 monetary award which included the following:

<b>Item</b>	<b>Amount</b>
Landlord's Portion of Terasen Gas Bill	\$643.41
Landlord's Portion of BC Hydro Bill	363.74
Loss of Use and Enjoyment of Portions of Rental Premises (25% x 6 months = \$2,520.00)	\$2,520.00
Male Tenant's Loss of Work	\$8,400.00
Cost of Medicine	249.61
Fuel Costs of Tenants' Resulting from Landlord's Alleged Neglect of Rental Premises	300.00
Pain and Suffering	12,523.24
<b>Total Monetary Award Requested by Tenant</b>	<b>\$25,000.00</b>

The tenants also provided written, oral and photographic evidence, the latter by way of a CD which I was able to review before I rendered my decision. The tenants maintained that the monetary award they were seeking was to compensate them for their lack of access to a functioning shower and bathtub in the master bedroom, lukewarm water in the premises, mould in a number of the living areas, rodent problems in the roof and other areas, and a host of other health and other problems they encountered in this tenancy.

### Analysis

#### Notice to End Tenancy and Order of Possession

The tenants did not dispute the landlord's assertion that they paid no portion of the requested October 2010 rent within five days of receiving his 10 Day Notice to End Tenancy. The tenants maintained that the landlord owed them for his portion of the utility costs and the overpaid portion of their rent resulting from the items listed in their

claim for a monetary award. However, they did not make an application for an order from a Dispute Resolution Officer to allow them to withhold all or a portion of their rent.

In accordance with section 46(5) of the *Act*, the tenant's failure to pay their October 2010 rent within five days of being served with the landlord's notice to end tenancy led to the end of this tenancy by November 12, 2010. The tenants said that they were planning to vacate the rental premises by the end of November. In case that does not happen, I issue the attached Order of Possession requiring the tenants to vacate the rental premises on or before one o'clock in the afternoon on November 30, 2010. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that time, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Applications for Monetary Orders

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

The landlord entered undisputed evidence that the tenants did not pay rent for October or November 2010. On that basis, I issue a monetary award of \$3,360.00 for unpaid rent for those months as set out below.

During the hearing, the parties discussed the tenants' utility bills submitted into evidence. The landlord did not dispute the tenants' assertion that the landlord remains responsible for \$643.41 in gas bills the tenants paid to Terasen Gas for this property. The tenant testified that the next hydro bill from BC Hydro has not been issued. The tenant estimated that the landlord's portion of the remaining hydro bill would be an additional \$64.78 beyond what the \$363.74 they requested in their amended application

for a monetary award. The landlord did not dispute the tenants' assertion that the landlord remains responsible for \$428.54 in hydro bills they have paid or will be paying to BC Hydro for this property (i.e.,  $\$363.74 + 64.80 = \$428.54$ ). I allow the tenants monetary awards of \$643.41 and \$428.54 for these two items.

Although the landlord did not apply to retain the tenants' security deposit plus interest, in accordance with the offsetting provisions of section 72(2) of the *Act*, I authorize the landlord to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

The tenants testified that they raised their concerns with the landlord by text messages and phone calls throughout this tenancy. The male tenant said that he sent the landlord one letter outlining some of their concerns about the rental premises early in their tenancy, but retained no copy of that letter. The landlord testified that the tenants did not raise many of the issues they outlined in their application for dispute resolution with him in any formal way. The landlord questioned the adequacy of the notice the tenants provided regarding many of the issues the tenants identified in their application for dispute resolution. He testified that the tenants have not allowed him to enter the premises to inspect or remedy a number of these problems. The tenants confirmed that they had shower facilities and a bathtub available to them for the duration of their tenancy, as there are two full bathrooms in the rental unit. The tenants made no application to the Residential Tenancy Branch for repairs, emergency repairs or a reduction in their rent. Rather, they waited until they received the landlord's notice to end tenancy for unpaid rent before they submitted any form of application for dispute resolution, at that time requesting a monetary award from the landlord.

I have carefully considered the male tenant's assertion that the health problems he has encountered are directly attributable to the living conditions of the rental unit. The male tenant testified that he has an asthmatic condition and is a painter by trade. I find the doctor's note submitted late provides little evidence that the living conditions in the rental unit are responsible for the male tenant's health condition.

After reviewing the evidence submitted, particularly the photographic evidence, I allow the tenants to reduce their monthly rent by an amount of \$100.00 per month from the second month of their tenancy, July 1, 2010, until they leave the end of their tenancy in November 30, 2010. This reduction is for their loss of quiet enjoyment, services and facilities that the landlord committed to provide but which were lacking in this tenancy. I dismiss all other elements of the tenants' application for a monetary award as they have not demonstrated to the extent necessary that any of these items warrant the issuance of a monetary award.

As the landlord has been partially successful in his application, I allow him to recover his filing fee from the tenants.

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at one o'clock in the afternoon on November 30, 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 issue a monetary Order in the landlord's favour in the following terms which allows the landlord to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid October 2010 Rent	\$1,680.00
Unpaid November 2010 Rent	1,680.00
Less Landlord's Portion of Terasen Gas Bill	-643.41
Less Landlord's Portion of BC Hydro Bill	-428.54
Less Reduction in Rent July – November 2010	-500.00
Less Security Deposit	-840.00
Filing Fee for Landlord's Application	50.00
<b>Total Monetary Order</b>	<b>\$998.05</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.