

## **DECISION**

Dispute Codes      CNR, MNDC, RP, RR, FF

### Introduction

This is an application by the Tenant to Cancel a notice to end tenancy for unpaid rent, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, have the Landlord make repairs to the property, allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties attended by conference call and gave affirmed testimony.

The Landlord has indicated that he wants an order for possession for unpaid rent.

### Issues(s) to be Decided

Is the Landlord entitled to an order of possession for unpaid rent?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to action by the Landlord to make repairs to the property?

Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

This Tenancy began on July 1, 2008 on a fixed term lease until June 30, 2009 then thereafter on a month to month basis. The monthly rent is \$3,250.00 payable on the 1<sup>st</sup> of each month. A security deposit of \$1,625.00 was paid on June 10, 2008.

The Tenant was served a 10 day notice to end a tenancy for unpaid rent on December 2, 2010 in person with a move out date of December 12, 2010. The Tenant admitted to withholding \$2,919.17 by giving a cheque to the Landlord for \$270.83. The Landlord stated that the Tenant did not have permission to withhold the rent whole or partial. The

Tenant confirms this by stating that this was an offer to satisfy the dispute between both parties as December 31, 2010 was to be the end of the tenancy. The Tenant filed his application for dispute resolution on December 3, 2010 the next day following being served with the 10 day notice to end the tenancy.

Both parties were served in person on December 10, 2010 with their respective evidence packages and the Landlord and Tenant both admit to being properly served by the Tenant with the hearing documents on December 6, 2010.

The Tenant is seeking compensation for loss of use for 50% of the master bedroom closet space as illustrated in photograph #4 in the Landlord's evidence and for the inconvenience of falling particulate matter from the ceiling as displayed in the same photograph #4. The Tenant called the Landlord the same day and the Landlord attended on September 19, 2010 with representatives from Cambie Roofing at 10:40am. September 20, 2010 two roofers from Cambie Roofing attended to perform a detailed inspection at 9am. The cause could not be determined by the roofers. "They said this elusive water seepage could be caused by the extraordinary strong wind and advised me that should it leak again, ....". November 7, 2010 in the evening, the Tenant reported to the Landlord that the master bedroom ceiling was wet and the plaster wall paper was curling open and dangling down. The Landlord attended the next day with a staff member from Cambie Roofing. This staff member could not locate the water leak, but did some water proofing measures and put a tarp around the whole chimney in an attempt to isolate the source and determined that the roof and shingles were in decent shape. On November 16, 2010 a staff member from Cambie Roofing attended again after reports of ceiling dampness persisting after a heavy rainfall, but with no water leakage. On November 18, 2010 the Landlord states that the roofing issues has persisted and determined that a new roof was required despite the current roofs warranty was still in effect. B & S Roofing was awarded a job to install a new roof the same day of after a quote was received. According to the Landlord the new roof was installed on December 14, 2010 and completed on December 16, 2010. The interior ceiling of the master bedroom has not yet been repaired. The Landlord has given evidence that the new roof was not completed prior to this date because of a sever

snow storm hitting the lower mainland and the roofers would start the next day weather permitting. The Landlord has submitted a letter from Cambie Roofing outlining their attendance at the rental site and the efforts made to locate and fix the source.

The Tenant has stated that half of the closet is being fully utilized by his spouse and that the master bedroom is still being fully utilized. The Tenant has not incurred any costs for this loss of use. He has stated that he has only moved his expensive suits by utilizing the closet space in other parts of the rental house. The Landlord states that the Tenant has not lost the use of the closet space, but was warned if he was concerned to move his expensive clothing and items as a precaution. The Landlord has stated that there is no damage to the ceiling spaces in the closet. The Landlord states that the only damage evident is that shown in photograph #4 overhanging the master bedroom between night table and the corner of the master bed.

### Analysis

Based upon the above, I am satisfied that the Tenant was properly served with the 10 day notice to end the tenancy for unpaid rent. The Tenant did not have permission to withhold the December rent payment.

Section 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing (a) the landlord makes an oral request for an order of possession, and (b) the director dismisses the tenant's application or upholds the landlord's notice.

The Tenant's application to cancel the notice to end the tenancy is dismissed. The Landlord is granted an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I am satisfied that the Landlord has responded with due diligence and find that no order is required to have the Landlord make repairs. This portion of the Tenant's application is dismissed.

I do find that the Tenant has been inconvenienced albeit without any financial losses. Section 28 A tenant is entitled to quiet enjoyment including, but not limited the rights of the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Accordingly, I find that the Tenant has proven an entitlement to a right to quiet enjoyment. I award to the Tenant for their inconvenience \$10.00 per day starting on September 20, 2010 to the date of this hearing on December 20, 2010 (91 days) to equal \$910.00. The Tenant's application for compensation has been successful. The Landlord may apply the \$910.00 entitlement to offset the unpaid rent of \$2,979.17. As the Tenant has been partially successful in his application I award him the recovery of the \$50.00 filing fee. The Landlord may offset this fee against the \$2,979.17 of unpaid rent.

### Conclusion

The Landlord is granted an order of possession.

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: December 21, 2010.

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Dispute Resolution Officer