



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

MNR, OPR, CNR, FF

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent and an Order of possession.

The tenants applied to cancel a notice issued for unpaid rent and to recover filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid November, 2010, rent?

Is the landlord entitled to an Order of possession for unpaid rent?

Were the tenants entitled to deduct the cost of emergency repairs from rent owed?

Should the notice ending tenancy for unpaid rent issued on December 2, 1020 be cancelled?

Are the tenants entitled to filing fee costs?

### Background and Evidence

The tenancy commenced 6 years ago. Rent is \$750.00 due on the first day of each month. During the hearing the tenants confirmed that they are moving out January 1, 2011. The landlord stated that they must vacate by December 31, 2010, as rent is due on the first day of each month and the tenants acknowledged this.

On November 4, 2010, the male tenant attempted to leave for work just after 5 a.m. and discovered he was locked in the apartment. A call was placed to the on-site manager, who came to the door and then, after talking with the tenants, left.

The tenants became very upset, as the male needed to get to work and the on-site manager had not explained what action she would take and was not answering her phone.

The tenants immediately arranged to have a locksmith attend to make the repair. While the tenant's locksmith was on site, the landlord's own repairperson arrived. The landlord's repairperson issued a note that stated he arrived at approximately 7 a.m. and was not given the opportunity to complete the repair as the tenant's locksmith had begun the repair work.

The tenants stated that they did not know what the on-site manager's plans were and that they took necessary action to have the emergency repair completed. The tenants provided a copy of the November 4, 2010, invoice in the sum of \$125.00, which they deducted from December rent owed.

The landlord stated that on December 2, 2010, a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of December 12, 2010, was given to the tenant; this was confirmed by the tenants. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$750.00 within five days after the tenants were assumed to have received the Notice. The Notice also indicated that the tenants were presumed to have accepted that the tenancy is ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

On December 3, 2010, the tenants applied to cancel the notice.

The landlord agreed that the tenants paid all of December rent owed except the locksmith fee of \$125.00.

The landlord submitted that the tenants failed to give the landlord a reasonable period of time to complete the repair and that the landlord's repairperson arrived at the rental unit while the tenant's repair person was present. The landlord stated that this showed that the landlord had responded in a timely fashion and that the tenants should not have

brought in their own repairperson without allowing the landlord a reasonable period of time to respond.

The landlord requested an Order of possession based upon the December, 2010, rent arrears in the sum of \$125.00.

The tenants stated that they were entitled to make this deduction for emergency repair.

### Analysis

There is no dispute that the tenants received the 10 day notice issued on December, 2, 2010; on that date. The notice required the tenants to vacate on December 12, 2010.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. The tenants applied to cancel the notice, based on their belief that the unpaid rent was justified under section 33 of the Act, as an emergency repair.

Section 33 of the Act allows a tenant to make repairs to a defective lock, if 2 attempts to telephone the landlord have been unsuccessful and, after making calls to the landlord, the landlord has been given a reasonable period of time to make the repair.

I find that the tenants failed to allow the landlord a reasonable time to respond to the defective lock. The landlord's agent attended at the rental unit, discovered the nature of the problem, returned to her suite and made the necessary arrangements to have the door fixed. She likely failed to answer repeated calls made to her by the tenants, as she was on the phone attempting to resolve the issue.

The fact that the landlord's repair person attended at the same time as the locksmith called by the tenant's supports the landlord's submission that the tenants had not allowed a reasonable period of time to elapse before they undertook the repair themselves. No more than 2 hours elapsed from the time the landlord's agent was made aware of the problem and the repairperson attended. I find that to be a reasonable period of time.

Therefore, I find that the landlord is entitled to compensation in the sum of \$125.00 for the locksmith repairs paid by the tenants, as there is no evidence before me that the landlord breached section 33 of the Act.

As the tenants have deducted a sum from their rent that was not required under section 33 of the Act, I find that the Notice issued on December 2, 2010, is of full force and that the landlord is entitled to an Order of possession effective 2 days after service to the tenants.

As the tenant's application is without merit, I decline filing fees to the tenants.

Disposition of the deposit held in trust was discussed. This tenancy is ending and the landlord must disburse the deposit as provided by the Act.

### Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$125.00, which is comprised of unpaid November, 2010, rent. Based on these determinations I grant the landlord a monetary Order for \$125.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order 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*.

Dated: December 23, 2010.

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Dispute Resolution Officer