



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

Dispute Codes      ERP, RP, LRE, MNDC, FF

## Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order under the Act or tenancy agreement, and orders for the Landlord to comply with the Act and tenancy agreement, for orders for the Landlord to make repairs to the rental unit, and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

## Issue(s) to be Decided

Are the Tenants entitled to the relief sought in their Application?

## Background and Evidence

I heard testimony that this tenancy began on March 1, 2010 and will end on March 31, 2011. Monthly rent is \$1,200.00 and no security deposit was paid.

I note the parties were previously in dispute resolution, and submitted evidence pre-dating the Decision of July 5, 2010, which I consider irrelevant and have not considered.

The Tenants are seeking a monetary order for \$4,000.00 for loss of quiet enjoyment and intimidation allegedly by the Landlord and/or her representative, an order requiring the Landlord to make emergency repairs and regular/non-emergency repairs and to suspend or set conditions on the Landlord's right to enter the premises.

The Tenants submitted a large amount of evidence, which included written transmissions between the parties, requests for repair, photos of the rental unit and a receipt for a plumber.

I heard testimony from the female Tenant that the entry light did not work when the tenancy began and was not fixed until December 21, 2010, after numerous requests to do so. The Tenant also testified that the Tenants have been without electrical power because a government worker had instructed them to turn off two breakers, losing power to the upstairs and master bedrooms, hallway, breakfast bar, kitchen and dining room lights. I heard testimony from the Tenant that they were in danger of losing the

children they keep in their home due to the unsafe conditions and that BC Authority will not let them turn the power on until a certified electrician has repaired the wiring, with notification to the Authority.

I heard testimony from the Tenant that the roof to the workshop, which she claimed was included in the lease, was leaking and that they have requested the Landlord to repair the same.

I heard testimony from the Tenant that they requested the Landlord clean the furnace ducts, which she believed to be clogged as a result of pet hair from the Landlord's pets when she, the Landlord, resided there. Further I heard testimony that when the Tenants decommissioned the humidifier, they noticed the presence of mould.

I heard testimony from the Tenant that there is a water leak in the basement, which is causing water to seep through the carpet, that the dishwasher was broken and that the bathroom taps needed replacing.

I heard testimony from the Tenant that the toilets had been fixed, but that incorrect parts had been used, causing the Tenants to flush twice each time.

I heard testimony from the Tenant that the Landlord had interfered with the Tenants quiet enjoyment due to the number of notices to enter issued by the Landlord and due to the Landlord allegedly using profane language and gestures.

The Tenant testified that the amount of \$4,000.00 was sought due to the number of entries by the Landlord, estimated to be at fourteen.

The Landlord submitted a large amount of evidence, which included a written rebuttal to the Tenants' application, letters from realtors and services persons, notices of entry to the rental unit and receipts for expenses involving the rental unit.

As to the issue of water leakage and the furnace, I heard testimony from the Landlord that the furnace is brand new as of August, and that, although the Tenants noticed the leaking on November 11, she did not receive notice until November 25. The Landlord stated that the leaking was from a plug left off during installation and it has now been fixed.

I heard testimony from the Landlord that she immediately attended to the wiring, it has now been fixed by a certified electrician and that she didn't know why the Tenants were not using the electricity in that area.

I heard testimony from the Landlord that the entry light is as it was at the start of the tenancy, and that the Tenants were well aware of the light as the parties all resided in the house as friends prior to the start of the tenancy. Further the Landlord stated she intends on selling the house and that she has been advised by an electrician that in

order to correct the problem, three walls may have to be removed. Further the Landlord stated she has placed a light in the entry way so that now the area has lighting.

I heard testimony from the Landlord that the outdoor shed and the dishwasher were not provided for as part of the tenancy agreement and that she was not required to repair those items, even though she disputed the dishwasher not working. Further the Landlord stated that the house was quite old, she intends on selling it, the Tenants accepted the house as it was and that she could not spend a lot of money making major repairs for things which were not agreed upon.

I heard testimony from the Landlord that she was well aware of her obligations to provide notice to enter the rental unit, and that although she has received numerous requests for repair from the Tenants, she gave at least 24 hours to three days notice prior to entering. The Landlord further stated that some requests were of an emergency situation and that shorter notice was given. I heard testimony from the Landlord that she has addressed each problem complained of by the Tenants, but due to the Tenants' non cooperation and coordination of the service persons' schedules, the problems were dealt with as soon as possible.

I heard testimony from the Landlord categorically denying that she was verbally abusive to the Tenants and considered those remarks slanderous.

I heard testimony from the Landlord's witness, the certified electrician who repaired the wiring to the rental unit, that the repairs had been in a timely manner, given his schedule and the holidays, and that the BC Authority had been notified of the repair. The witness further testified that while he was there to repair the wiring, the male tenant was verbally abusive to him.

As to the Tenants' toilet issue, I heard testimony from the Landlord's witness that he took the broken part to a parts place to obtain a similar replacement and that the toilet was fixed with the replacement part.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are addressed and described in this Decision.

In connection with the landlord-tenant relationship, the covenant of quiet enjoyment is contained in every tenancy agreement under Section 28 of the *Act*.

I am guided by Residential Policy Guideline 6 in deciding the Tenants' claim for loss of quiet enjoyment and I find that while the Landlord issued numerous notices to enter the rental unit, the notices were in response to the Tenants' numerous requests for repairs. I find the evidence shows the Landlord was responsive to the Tenants' requests for repair and sought diligently to resolve the issues with the Tenants, for which she was obligated. Therefore I find this does not constitute a basis for a breach of the covenant of quiet enjoyment and I **dismiss** the Tenants' claim for loss of quiet enjoyment.

As to the portion of the Tenants' claim for an order suspending or setting the Landlord's right to enter the unit, I find that the evidence and testimony shows the Landlord complied with the Act by providing proper notice and that portion of the Tenants' application is **dismissed**.

As to the Tenants' claim that the Landlord or her representative used abusive language, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. While I accept that the parties appear to be confrontational in their relationship, I find the Tenants submitted insufficient evidence to prove that the Landlord used intimidation, threats, foul language and gestures.

The dishwasher and the outdoor shed are not listed as being included in the tenancy agreement; therefore I do not find the Landlord is responsible for repairing these items.

I find that as of the date of the hearing, the repairs for which the Landlord is responsible have been completed and that portion of the Tenants' application is **dismissed**.

As I find the Tenants did not lose their quiet enjoyment of the rental unit and submitted insufficient proof of any other loss, I **dismiss** the Tenants' Application in its entirety.

As the Tenants' Application is dismissed, I decline to award the filing fee.

### Conclusion

The Tenants' Application is dismissed.

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: January 19, 2011.

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Residential Tenancy Branch