



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, CNR, OLC, RP, LRE, OPR, MNR, MNSD, FF

### Introduction

This was the hearing of applications by the landlord and by the tenant. The tenant applied to cancel Notices to End Tenancy for cause and for unpaid rent ;as well she applied for a monetary order , a repair order, an order that the landlord comply with the Act and an order setting conditions on the landlord's right to enter the rental unit. The landlord applied for a monetary order and an order for possession of the rental unit. The hearing was conducted by conference call. The tenant and the named representatives of the landlord participated in the hearing.

### Issue(s) to be Decided

- Is the landlord entitled to an order for possession?
- Is the landlord entitled to a monetary order for unpaid rent, if so in what amount?
- Is the tenant entitled to a monetary order to compensate her for damage?
- Should the landlord be ordered to perform repairs?
- Should the landlord be ordered to comply with the *Act*, Regulation or tenancy agreement?
- Should the landlord's right to enter the rental unit be restricted?

### Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on September 15, 2010. Monthly rent was \$1,950.00. The tenant paid a security deposit of \$975.00 at the commencement of the tenancy.

On October 11, 2010 there was a flood in the rental unit due to a plumbing failure. The flood was not the fault of the tenant and I was told at the hearing that the strata corporation acknowledged responsibility for the flood and that damage caused to the rental unit.

Due to the flood the flooring in the rental unit and several feet of the drywall throughout the rental unit had to be removed. According to the tenant she had to move out of the rental unit and was not able to move back until on or about December 15, 2010. The tenant submitted photographs of the rental unit. She said that even after she moved back to the rental unit the work continued around her and even on the day of the hearing work in the rental unit was incomplete and ongoing. The tenant paid rent for October, but she has paid no rent since then.

The tenant testified that late on the evening of January 2, 2010 Mr. W.C., the landlord's representative let himself into the rental unit and served her with a 10 day Notice to End Tenancy for unpaid rent. The tenant called the police when W.C. entered the rental unit without notice and without knocking or asking permission. Neither the tenant nor the landlord submitted a copy of the Notice to End Tenancy as evidence at this hearing.

The landlord's representative, W.C. said that the tenant moved back to the rental unit in mid November, 2010. The tenant denied that she moved back in November. She said that she visited the rental unit in November but did not move back until mid-December. The tenant testified that the workers performing repairs to the rental unit damaged some of her belongings, including a leather sofa that was scratched and marked with paint and a glass coffee table that was chipped.

The tenant testified that she intends to move out of the rental unit at the end of January and does not object to the granting of an order for possession effective January 31, 2011.

The tenant's position with respect to rent is that she paid rent for the month of October, but was not able to occupy the rental unit after October 11<sup>th</sup> until mid December and the

rent she paid for October when she could not occupy the rental unit should be applied to cover rent for the second half of December, when she returned to the rental unit.

The landlord applied for a monetary order in the amount of \$3,900.00 for unpaid rent for December and January. The tenant requested a monetary award in the amount of \$3,500.00. The tenant provided photographs of the rental unit that showed that the lower three feet of the walls in the unit were removed as was the flooring throughout the unit. She provided pictures of some of the repair work that was incomplete and poorly executed.

Apart from photographs of her sofa, coffee table and damaged night stand, the tenant did not provide documentary evidence with respect to her claim for compensation.

#### Analysis and Conclusion

The tenant has agreed that she will move out of the rental unit at the end of January and on that basis I grant the landlord an order for possession effective January 31, 2011 after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The tenant filed her application on January 7, 2011 in response to the Notice to End Tenancy given by the landlord. The tenant did not obtain an order permitting her to withhold the payment of rent, but it is clear that the landlord, through his agents agreed that the tenant should not be responsible for rent for the period when the rental unit was uninhabitable. I accept the tenant's evidence that the rental unit was not fit for occupancy before December 15, 2011 and she did not move back to the unit until then. I find that the tenant is not liable for rent for the month of December because the rent she paid for half of the month of October when she had to stay elsewhere should be credited against rent for the period from December 15 to December 31, 2010.

I find however that the tenant is responsible for rent for January in the amount of \$1,950.00.

With respect to the tenant's application and claim for compensation, although she is responsible for payment of January's rent, I find that the rental unit that she has occupied from December 15<sup>th</sup> to the end of January was deficient in a number of respects as shown in the photographs that she submitted. The tenant had to repeatedly clean up the dust and debris created by the tradesmen working in the unit and the unit as it now is, is not in the condition it was when she agreed to rent at a monthly rent of \$1,950.00. I find that the tenant is entitled to an award for loss of quiet enjoyment for the period from December 15 to January 31, 2011 and an amount to compensate her for damage caused to her furniture by the landlord's contractors. I fix the award for loss of quiet enjoyment and damage to her belongings in the total amount of \$600.00. Because the tenancy is ending the orders for repairs, restricting the landlord's access and directing the landlord to comply with the *Act* and Regulation are dismissed.

Pursuant to section 72 of the *Residential Tenancy Act*, I set off the award to the tenant against the award to the landlord, leaving a net amount due to the landlord of \$1,350.00

I order that the landlord retain the \$975.00 security deposit in partial satisfaction of the award and I grant the landlord a monetary order for the balance of \$375.00. Because success was divided I do not award a filing fee to either party.

Dated: January 27, 2011.

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