



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MND, MNR, MNSD, CNR, MNDC, OLC, ERP, RP, PSF,  
LRE, LAT, RR, FF

### Introduction

This hearing dealt with applications from both the tenants and the landlord pursuant to the *Residential Tenancy Act* (the *Act*). On March 25, 2011, the tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

On April 7, 2011, the landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order of \$9,986.28 for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

### Preliminary Matters – Service of Documents

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord posted his 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) on

the tenants' door on March 21, 2011. This Notice identified \$1,300.00 in unpaid rent and \$321.51 in unpaid utilities. I am satisfied that the landlord served this Notice to the tenants in accordance with the *Act*.

The tenants provided written evidence that they sent the landlord a copy of their dispute resolution hearing package by registered mail on March 26, 2011. They provided a copy of the Canada Post Tracking Number to confirm this mailing. The landlord confirmed having received the tenants' hearing package by registered mail. I am satisfied that the tenants served their hearing and evidence packages to the landlord in accordance with the *Act*.

The landlord testified that he placed a copy of his application for dispute resolution in the tenants' mailbox, which he shares with them, after completing his application on April 7, 2011. The female tenant (the tenant) testified that they received his two-page application at 7:00 p.m. on April 8, 2011. However, the tenant said that they have not received any evidence from the landlord.

The Residential Tenancy Branch (RTB) has received three sets of evidence from the landlord, one of these was received on April 12, 2011 and another was received on April 13, 2011. Both of these evidence packages were submitted well after the deadline for submitting evidence. The third package of the landlord's evidence was a multi-page summary of his monetary claim which he attached to his April 7, 2011 application for dispute resolution to the Residential Tenancy Branch (RTB). He confirmed that he did not attach this evidence to the copy of his application he placed in the tenants' mailbox, and has not provided this information to the tenants.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*

*(e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord has not served the tenants in a manner required by section 89(1) of the *Act*. Although the tenants confirmed that they received a copy of the landlord's two-page application for dispute resolution, the landlord did not provide them with the material he attached to that application, information that was critical to understand his claim for a monetary Order of \$9,986.28. Under these circumstances, I am not satisfied that the landlord properly served the tenants with his dispute resolution hearing package. As such, at the hearing, I dismissed the landlord's application for dispute resolution with leave to reapply.

After I made that finding, the landlord confirmed that he was seeking a dismissal of the tenants' application to cancel the Notice. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

#### Issues(s) to be Decided

Should the landlord's Notice to End Tenancy be cancelled? Should the landlord be issued an Order of Possession? If the landlord's Notice were cancelled, should conditions or orders be placed on the remainder of this tenancy? Should the tenants be awarded a monetary Order? Are the tenants entitled to recover their filing fee from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, invoices, receipts, miscellaneous text messages and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Although no written residential tenancy agreement was prepared by the landlord, the parties agreed that this month-to-month tenancy commenced on January 15, 2011. Monthly rent was set at \$1,300.00, payable in advance on the first of each month. The tenants submitted undisputed oral and written evidence that they paid the landlord rent for the period from January 15, 2011 and for February 2011. Although the parties agree that the tenants were supposed to pay a security deposit of \$650.00 when they commenced this tenancy, the tenants have not paid their security deposit for this tenancy.

The landlord maintained that pets were not supposed to be allowed in this tenancy. The tenants testified that there was no discussion of pets at the commencement of this

tenancy. The tenant said that after the tenants paid their February 2011 rent, the landlord realized they were keeping three dogs in the rental premises. They entered written testimony that the landlord told them on February 6, 2011 that they would have to leave the rental unit in approximately ten days. The tenant said that the landlord told them that they would have to leave by February 20, 2011. The tenants testified that their interactions with the landlord deteriorated after they told the landlord that he could not evict them without following the provisions of the *Act*.

The parties agreed that the tenants were supposed to reimburse the landlord for his payment of utilities (gas and hydro). However, when the tenants did not reimburse the landlord for these utilities as promptly as the landlord desired, the landlord did not pay these bills and service to the tenants was disconnected. Terasen Gas terminated service on the landlord's account on February 15, 2011 and BC Hydro did the same on March 18, 2011. In both instances, the tenants established their own accounts with these utility companies.

The parties provided conflicting evidence as to whether cable television and internet were to be included in the tenants' rent. The tenants testified that these services were included in their rent until the landlord discontinued their internet service on March 18, 2011 and their cable television services on March 20, 2011. The landlord testified that these services were not included in the tenants' rent.

The landlord agreed that the tenancy was to include a washer, a dryer and a stove, all items which the landlord removed from the rental unit during the course of this tenancy. He testified that he did not have the funds to replace these appliances after he confirmed the tenants' claim that they were not working properly. In addition, the tenants claimed that the landlord was only stopped from removing their front door by the attendance of RCMP officers called by the tenants.

The tenants admit that they did not pay March 2011 rent and have not paid anything towards the utility costs in the landlord's Notice. They maintain that the landlord has failed to provide them with services and facilities that he committed to provide at the commencement of their tenancy. They also provided oral and written evidence that they have paid for emergency electrical repairs that were necessary for their safety and the preservation of the rental property. They requested a reduction in their rent to take into account their payment for emergency repairs, for reduced services and facilities, and for the landlord's unauthorized entry to their rental unit. They asked that the landlord's Notice be cancelled due to the problems encountered with this tenancy.

The tenants applied for a monetary Order for \$2,950.00. This amount included the following items:

Item	Amount
Reimbursement of Half of Feb 2011 Rent (Removal of Stove, No Washer and Dryer, Having to call police, and Landlord's Threats)	\$650.00
Credit for March 2011 Rent	1,300.00
Reimbursement for Moving Costs	250.00
Reimbursement for Electrical Repairs to Breaker Box	650.00
Reimbursement for Laundry Charges	100.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award Requested</b>	<b>\$2,950.00</b>

The tenants also applied to recover their \$50.00 filing fee from the landlord.

### Analysis

#### Tenants' Application for a Monetary Order

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the oral and written evidence presented, I am satisfied that the landlord has reduced services and facilities that were supposed to have been included in the tenant's monthly rent. However, the tenants' eligibility for a monetary award is limited to those items removed before March 1, 2011, the date when they stopped paying rent to the landlord. Similarly, I cannot give the tenants' credit for March 2011 rent that they have not paid.

Based on the undisputed oral and written evidence of the tenants, I allow the tenants' application for a monetary award of \$60.00 to compensate them for their loss of laundry facilities resulting from the landlord's removal of the washer and dryer from the rental property in mid-February 2011. As of March 1, 2011, I allow the tenants to reduce their monthly rent by \$100.00 for their loss of this service or facility that was supposed to be included in their monthly rent.

Based on the undisputed oral and written evidence of the tenants, I allow the tenant's application for a monetary award of \$50.00 to compensate them for the landlord's removal of their stove from the rental premises in February 2011. As of March 1, 2011, I allow the tenants to reduce their monthly rent by \$100.00 for the landlord's removal of the stove from their rental unit.

The tenants also requested a monetary award for the landlord's unauthorized entry into their rental unit on two occasions. Based on the undisputed evidence presented by the tenants, I allow the tenants a further monetary award of \$200.00 for this unauthorized access to their rental unit.

As of the dates that hydro and gas service on the landlord's accounts were terminated, the tenants began paying their own hydro and gas for their rental unit. I allow the tenants a monetary award of \$9.66 for the period from February 15, 2011 until February 28, 2011 because they had to pay for their own gas service to Terasen Gas instead of the previous arrangement whereby this utility was included in their monthly rent. This monetary award is issued at the rate of \$0.69 per day, the daily amount charged for this rental unit for the period from January 27, 2011 until February 15, 2011, on the Terasen Gas bill provided by the landlord. In addition, I allow a monetary award of \$50.00 to compensate the tenants for the disruption that this unannounced change in the terms of their tenancy caused them. As of March 1, 2011, I allow the tenants to reduce their monthly rent by \$21.70 to reflect the landlord's removal of this service from their monthly rent.

As of April 1, 2011, I allow the tenants a reduction of \$88.04 in their monthly rent because as of March 18, 2011 they had to pay BC Hydro for their hydro service instead of the inclusion of this utility within their monthly rent. This reduction is based on the pro-rated cost of hydro at \$2.84 per day over a 38 day period indicated on a BC Hydro bill provided by the landlord. I make no monetary award in the tenants' favour for this reduction in service as the tenants have not paid their outstanding March 2011 rent and thus are not entitled to an offset against their paid rent for that month.

As of April 1, 2011, I allow a reduction in the tenants' rent of \$50.88 for the landlord's termination of cable television and internet service to the tenants which I find was intended to be part of their monthly rent. I make no monetary award in the tenants' favour for this reduction in service because the tenants have not paid their outstanding March 2011 rent.

As of March 1, 2011, I set the tenants' monthly rent at \$1,078.30 to reflect the changes in the services and facilities provided to them by the landlord by that date. This monthly rent is reduced on the following basis:

<b>Item</b>	<b>Amount</b>
Original Monthly Rent as per Agreement	\$1,300.00
Deduction for Landlord's Removal of Gas from their Monthly Rent	-21.70
Deduction for Landlord's Removal of Laundry Facilities from their Monthly Rent	-100.00
Deduction for Landlord's Removal of Stove from their Monthly Rent	-100.00
<b>Total Monthly Rent as of March 1, 2011</b>	<b>\$1,078.30</b>

As of April 1, 2011, I set the tenants' monthly rent at \$939.38 to reflect the changes in the services and facilities provided to them by the landlord by that date. This monthly rent is reduced on the following basis:

<b>Item</b>	<b>Amount</b>
Original Monthly Rent as per Agreement	\$1,300.00
Deduction for Landlord's Removal of Hydro from their Monthly Rent	-88.04
Deduction for Landlord's Removal of Gas from their Monthly Rent	-21.70
Deduction for Landlord's Removal of Cable Television and Internet from their Monthly Rent	-50.88
Deduction for Landlord's Removal of Laundry Facilities from their Monthly Rent	-100.00
Deduction for Landlord's Removal of Stove from their Monthly Rent	-100.00
<b>Total Monthly Rent as of April 1, 2011</b>	<b>\$939.38</b>

Since the tenants have been partially successful in their application, I allow them to recover \$25.00 of their filing fee from the landlord.

#### Tenants' Claim for a Monetary Order for Emergency Repairs

Section 33 of the *Act* establishes the circumstances whereby tenants can obtain reimbursement for emergency repairs. The tenants claim that the uncompleted state of repairs conducted by the landlord to the electrical breaker system for their rental unit placed their safety in jeopardy and as such required immediate repairs. There was

conflicting evidence from the parties as to the state of the electrical breaker system which prompted the tenants' emergency repairs. Section 33(3) of the *Act* reads as follows:

*(3) A tenant may have emergency repairs made only when all of the following conditions are met:*

*(a) emergency repairs are needed;*

*(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*

*(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

Based on the evidence presented, I am not satisfied that the tenants gave the landlord a reasonable opportunity to make repairs to the electrical system before they took action themselves to repair the system. The landlord testified that the repairs conducted at the tenants' prompting were conducted quickly. He provided undisputed oral testimony that the power was restored the same evening to the rental unit.

The parties disagreed regarding the accuracy of the photographs of the electrical system the tenants entered into evidence. The tenants admitted that they did remove the cover placed over the electrical system by the landlord or his electrician before they took their photographs entered into evidence.

Section 33 of the *Act* also establishes the process whereby tenants provide a landlord with written accounts and receipts for emergency repairs claimed. Section 33(7) allows a tenant to deduct the amount of repairs from rent if a landlord does not reimburse the tenant for emergency repairs properly requested and claimed.

In this case, the tenants submitted an invoice dated March 17, 2011 from AE Service, also listing AG as the provider of the service to the tenants. The landlord and his mother who conducted a search into the details of this company and contractor had many questions and concerns about the authenticity of this invoice. They testified that the invoice was not issued on any company letterhead, had no postal code or phone number for the company, and cited a GST number that did not exist. They provided oral and written evidence that neither the company nor the individual noted on the invoice are registered on the list of BC Electrical Contractors. The landlord testified that he believes that the male tenant worked on the electrical system himself and that no certified electrician conducted the tenants' emergency repairs to the electrical system.

The tenant testified that the company and the electrician are fully certified to do electrical work in this province and questioned whether the electrician retained by the



landlord to start work on the electrical breaker system, which they subsequently had repaired, was a certified electrician. Although the landlord would not provide his electrician's last name, he testified that this electrician was certified, but reluctant to have his name provided to the tenants due to fears regarding the tenants' potential actions towards him.

Although the tenants provided oral and written testimony regarding the condition of the emergency breaker system before they commenced their emergency repairs, they provided inadequate independent verification of their claims regarding this system.

I am not satisfied that the invoice provided by the tenants meets the requirements of the *Act* to demonstrate that they are entitled to a monetary award for emergency repairs. The lack of critical information on this invoice combined with the evidence submitted by the landlord convince me that the tenants are not entitled to reimbursement of their claim for \$677.60 in emergency repairs. There is no indication on the invoice that the tenants have paid this amount to the contractor, nor have the tenants entered into written evidence a copy of the \$250.00 "Permit for work done" that is included in the invoice. Based on a balance of probabilities, I have sufficient concerns regarding the authenticity of the invoice that I dismiss the tenants' claim for a monetary award for this item.

Even if the invoice is accurate and was paid by the tenants, I do not find that the tenants have satisfied the requirements of subsection 33(3)(c) of the *Act* which would be necessary for them to have undertaken emergency repairs.

I dismiss all other aspects of the tenants' claim for a monetary award as I find that the tenants have not met the standard of proof required by section 67 of the *Act* to demonstrate their entitlement to such an award.

#### Tenants' Application to Cancel Notice to End Tenancy and Landlord's Oral Request for Order of Possession

The *Act* does not enable tenants to arbitrarily withhold rent or utilities owing from their tenancy without obtaining an Order from the Residential Tenancy Branch. The tenants freely admit that they have no such Order, although they have applied to obtain one through their current application.

Despite the problems they encountered during this tenancy, there is evidence that the parties entered into an oral tenancy agreement which required their payment of rent and a portion of the utilities. Their refusal to pay rent for March 2011 within five days of receiving the landlord's Notice ended their tenancy. Although I find that they are entitled

to reduce portions of their outstanding March 2011 rent for services and facilities that the landlord is no longer providing to them, these do not offset the amounts that they owe the landlord.

In accordance with section 55(1) of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession. Section 55(1) of the *Act* reads as follows:

**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 landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since this tenancy is ending shortly, I have not considered the remainder of the tenants' applications that are specific to a continuation of this tenancy (e.g., orders to make repairs; orders to set conditions on the landlord regarding this tenancy, etc.) as I consider these matters moot.

As the tenants have been partially successful in their application, I allow them to recover \$25.00 of their filing fee from the landlord.

### Conclusion

I dismiss the landlord's application for dispute resolution with leave to reapply.

I dismiss the tenants' application to cancel the landlord's Notice to End Tenancy for Unpaid Rent. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed. I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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 award in the tenants' favour in the following terms:

<b>Item</b>	<b>Amount</b>
Landlord's Discontinuation of Gas Supply from February 15 to February 28, 2011	\$59.66
Loss of Laundry Facilities - February 2011	60.00
Loss of Stove – February 2011	50.00
Compensation for Landlord's Accessing Tenants' Rental Unit without Authorization	200.00
Recovery of Partial Filing Fee for this application	25.00
<b>Total Monetary Order</b>	<b>\$394.66</b>

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

I set the monthly rent for this tenancy for March 2011 at **\$1,078.30**. I set the monthly rent for this tenancy for April 2011 at **\$939.38**.

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*.