



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNDC, OLC, FF  
                             OPR, MNR, FF

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for compensation for an emergency repair, for an Order that the Landlord comply with the Act and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are the Tenants entitled to be compensated for a repair?

### Background and Evidence

This fixed term tenancy started on February 15, 2011 and expires on February 28, 2012. Rent is \$980.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$490.00 at the beginning of the tenancy.

The Landlord said that the Tenants' post-dated rent cheques for April and May 2011 were returned for insufficient funds and as a result, he served one of the Tenants in person on May 9, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 9, 2011. The Landlord said the Tenants' rent cheque for June 2011 was also returned for insufficient funds with the result that rent is unpaid for April, May and June, 2011 in the amount of \$2,940.00.

The Tenants said they had problems at the beginning of the tenancy with one of the toilets in the rental unit overflowing. The Parties agree that the Landlord had a plumber check the toilet on March 4, 2011. The Landlord said the plumber told him that the toilet was working properly however he used a snake to remove any blockages. The Landlord said one of the Tenants told him two days later that the toilet was working properly but then a few days later the other Tenant contacted him to advise him that it was not working. The Landlord said he arranged to have another plumber look at the toilet on April 5, 2011 and he advised the Landlord that the toilet was working properly but recommended that it be replaced with one having a larger outflow capacity. The

Landlord said he agreed to order a new toilet. The Landlord said one of the Tenants then called him on April 5, 2011 to say he would replace the toilet however the Landlord asked him not to do so because one was on order. The Landlord admitted that he cancelled this order when he discovered that the Tenants' rent cheque for April was returned for insufficient funds. The Tenant said he replaced the toilet with a new one at a cost of \$300.00 and had to take 2 full days off of work to purchase the materials and therefore lost wages of \$400.00.

The Tenants admitted that they did not pay rent for April 2011 because the Landlord had not made the toilet repair. The Tenants said they offered to pay the Landlord cash for April and May rent on 3 occasions prior to May 9, 2011 but the Landlord would not accept it and asked them to move out. The Tenants also argued that the Landlord deposited their May 2011 rent cheque after they had offered him cash and therefore he knew or should have known that that cheque would be returned. The Tenants argued that they should not be responsible for rent because of the unsanitary conditions created by the toilet backing up but admitted that that would not have been an issue after April 5, 2011 (or shortly thereafter) when the toilet was replaced.

### Analysis

During the hearing, the Parties agreed that the Landlord would receive an Order of Possession to take effect on June 30, 2011 and accordingly, one will be issued to the Landlord pursuant to s. 62(2) and s. 55(2)(d) of the Act on those terms.

Based on the evidence of both Parties, I find that rent is unpaid for April, May and June 2011 and as a result, I find that the Landlord is entitled to a monetary award of \$2,940.00. Although the Tenants argued that the Landlord refused to accept their cash payment for April and May 2011 rent, they agreed that as of the hearing the Landlord has not received any funds for those months and therefore I conclude that rent is still unpaid. The Tenants also argued that they should not have to pay rent because of alleged unsanitary conditions created by a mal-functioning toilet. However, the Tenants' application did include a claim for this relief. Furthermore, the Tenants admitted that this problem did not exist after approximately April 5, 2011, once the toilet was repaired.

The Tenants sought to recover \$700.00 for a toilet repair. The Tenants said they repaired the toilet because the Landlord failed or refused to do so. The Tenants claimed they spent \$300.00 to purchase a new toilet but they provided no documentary evidence of that. One of the Tenants also claimed that he took 2 days off of work to purchase materials to replace the toilet and lost 2 days of wages. However, the Tenant also provided no evidence to corroborate this claim. The Tenants admitted that they never told the Landlord that they had to take time off of work to replace the toilet or that they incurred expenses to replace it. The Landlord argued that the amount of time claimed by one of the Tenants for replacing the toilet (ie. 20 - 24 hours) was excessive.

The Tenants bear the onus of proof on this issue and must show on a balance of probabilities that they incurred expenses to replace a toilet. This means that if the Tenants' evidence is disputed by the Landlord, the Tenants will have to provide additional corroborating evidence to satisfy the burden of proof. Given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Tenants, I find that there is insufficient evidence to conclude that the Tenants incurred expenses to replace a toilet and their application for compensation is dismissed without leave to reapply.

As any order reimbursing the Parties for their respective filing fees would be offsetting, I dismiss that part of their respective applications without leave to reapply.

### Conclusion

The Tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent is withdrawn and the Parties agree that the Landlord will receive an Order of Possession to take effect at 1:00 p.m. on June 30, 2011.

The Tenants' application for a Monetary Order is dismissed without leave to reapply. A Monetary Order in the amount of \$2,940.00 has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: June 09, 2011.

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Residential Tenancy Branch