



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, ERP, RP, PSF, LRE, RR, MNDC, FF  
OPR, MNR, FF

### **Introduction**

At the beginning of the hearing the parties confirmed that the tenancy ended on June 15, 2011 when the Tenant moved out. Consequently, the Landlord's application for an Order of Possession and the Tenant's applications for an Order that the Landlord make emergency repairs, general repairs and provide services and facilities, for an Order that the Landlord comply with the Act or tenancy agreement, for an Order restricting the Landlord's right to enter the rental unit, for a rent reduction and to cancel a 10 Day Notice to End Tenant for Unpaid Rent or Utilities are dismissed without leave to reapply.

Consequently, this matter dealt with the Landlord's application to recover unpaid rent and the filing fee for this proceeding and the Tenant's application to recover compensation for damage or loss under the Act or tenancy agreement and the filing fee for this proceeding.

### **Issue(s) to be Decided**

1. Are there rent arrears and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?

### **Background and Evidence**

This tenancy started in October 2009 and ended on June 15, 2011 when the Tenant moved out. Rent was \$670.00 per month payable in advance on the 1<sup>st</sup> day of each month. There is no written tenancy agreement however the parties agree that the Tenant's rent included a refrigerator and stove, utilities and laundry. The Tenant said that internet was also included in the rent which the Landlord denied however he admitted that occupants of the rental property were given the use of it.

### **The Landlord's Claim:**

The rental unit is one of 5 suites attached to the Landlord's residence. In mid-February 2011, the Landlord advised his tenants that a municipal by-law officer would be

inspecting the rental units and that they would likely be deemed illegal suites. Consequently, the Landlord advised the tenants that he needed to remove their stoves, sinks and counters until after the inspections and that the tenants could lose the use of their stoves permanently. The Landlord said that to compensate his tenants for this inconvenience, he allowed them to deduct \$300.00 from their rent for March 2011 and \$20.00 from their rent thereafter to compensate them for the loss of their stoves. The Tenant paid \$370.00 per month for March 2011.

The Landlord said for the months of April and May 2011, however, the Tenant unilaterally deducted a further \$80.00 for each of those months for the loss of use of her stove. The Landlord said he sent the Tenant e-mails advising her that she was short on her rent but she still refused to pay it so he served her with a 10 Day Notice to End Tenancy. The Landlord said the Tenant did not pay rent for June 2011 (of \$650.00) and on June 14, 2011 advised him that she would be moving out the following day. Consequently, the Landlord sought to recover unpaid rent of \$810.00.

The Tenant claimed that the Landlord initially advised her in March 2011 that he would reduce the monthly rent by \$100.00 to compensate her for the loss of use of a stove but later told her that he couldn't afford to do that and offered a reduction of only \$20.00.

#### The Tenant's Claim:

The Tenant said that the Landlord removed the stove, sink and counter from the rental unit at the end of February 2011 in anticipation of an inspection by a by-law officer. The Tenant said the Landlord initially told her that there would be a disruption of approximately 3 days but that it could be longer. The Tenant claimed that the Landlord also told her that he would reduce her rent by  $\frac{1}{2}$  but that if the disruption lasted longer she would not have to pay rent for March. The Tenant said the Landlord did not replace the counter and sink until the 3<sup>rd</sup> week of March 2011 with the result that she had to wash dishes in her bathtub during that period. The Tenant said the Landlord also frequently entered her suite (without notice when she was not home) during the first 3  $\frac{1}{2}$  weeks of March and removed cupboards, wiring and plumbing. The Tenant said that this disruption ended at the end of March 2011 however the Landlord did not complete some repairs such as securing cabinets to the wall in the event the building inspector returned. The Tenant said that during this period, laundry facilities were removed for a period of about 2 weeks and due to a water pump issue, she had no water for 3 days. Consequently, the Tenant sought the return of her March rent payment of \$370.00.

The Landlord denied that he offered the Tenant free rent for March 2011 and claimed that he only offered a rent reduction of \$300.00. The Landlord said the Tenant was under the mistaken belief that another tenant of the rental property had received free rent for that month and that was why she insisted on receiving free rent. The Landlord said he replaced the Tenant's stove with a hot plate and convection oven. The Landlord

argued that the Tenant had the option of moving out if she was unwilling to agree to his proposal for a rent reduction but instead she decided to stay.

The Tenant also sought compensation of \$270.00 for March, April, May and June 2011 due to the loss of the use of her stove, a broken kitchen tap, unsecured cabinets, holes in the wall and baseboards not replaced. The Tenant argued that the Landlord refused to make these repairs until she paid him \$160.00 for April and May. The Tenant said her right to quiet enjoyment was also interfered with because the Landlord sent her e-mails demanding that she pay him the amounts she had deducted for April and May 2011 and told her that if she didn't like the rent reduction he proposed for the stove, she could leave. The Tenant argued that the Landlord never acknowledged the hardship he had caused to his tenants over the illegal suites or what he had taken away from them.

The Landlord claimed that the Tenant never told him that her living conditions were unacceptable. Instead the Landlord claimed that the Tenant pointed out repair items in early April 2011 and advised him that it was not a big concern to her. The Landlord argued that these things only later became a concern when the Tenant did not get the rent reduction she sought and she sent him a nasty letter demanding that he make the repairs when she was present. The Landlord said he was reluctant to be around the Tenant. However, the Landlord also admitted that he thought the Tenant should pay the rent shortfall from April and May 2011 before he made any repairs. The Landlord denied that the Tenant told him about a broken kitchen sink tap which he said he just discovered at the end of the tenancy. The Landlord also claimed that the rental property was without water for only one day.

The Tenant also sought to be reimbursed for the cost of a shower head. The Tenant said the shower head in the rental unit broke approximately 2 weeks before the tenancy ended. The Tenant admitted that she did not advise the Landlord about this. The Landlord denied that the existing shower head was broken.

## **Analysis**

### **The Landlord's Claim:**

I find that rent was \$670.00 per month which included utilities, a refrigerator, a stove and laundry facilities. The Tenant also claimed that internet was included in her rent which the Landlord denied. In any event, the Tenant admitted that this service was terminated in early June 2011. There is no dispute as to what the Tenant paid for rent for the months of March, April, May and June 2011. The Tenant claims the Landlord agreed she would only be responsible for ½ or no rent for March 2011 and that she would receive a rent reduction of \$100.00 for the loss of a stove for each month thereafter (all of which was denied by the Landlord).

Given that the Tenant is the one asserting that there was an agreement to reduce her rent, she has the evidentiary burden of showing on a balance of probabilities that this was the case. However, given the contradictory evidence of the Parties on this issue and in the absence of any corroborating evidence from the Tenant, I find that there is insufficient evidence of an agreement to give the Tenant a rent reduction on the terms she alleged. Consequently, I find that there is unpaid rent of \$80.00 for April, \$80.00 for May and \$325.00 for the period June 1-15, 2011. I also find that the Landlord is entitled to a loss of rental income for the period June 16 – 22, 2011 in the amount of \$325.00 for a total of \$810.00.

As the Landlord has been successful on his claim, he is also entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee he paid for this proceeding for a total monetary award of **\$860.00**.

#### The Tenant's Claim:

Section 27 of the Act says as follows:

- (1) A landlord must not terminate or restrict a service or facility if
  - (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
  - (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 28 of the Act says that a tenant is entitled to quiet enjoyment including, but not limited to the right to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with s. 29 of the Act.

The Tenant received a rent reduction of \$300.00 for March 2011 however she sought a further rent reduction of \$370.00 for the inconvenience of having to accommodate the Landlord's attempt to conceal the illegal suite from a by-law officer. Based on the evidence of both parties, I find that the disruption to the Tenant's right to quiet enjoyment during the month of March was substantial and lasted for approximately 3 ½ weeks. In particular, I find that the Tenant lost the use of her kitchen for that month as

well as laundry facilities for approximately ½ of the month. I also find that the Tenant did not have water for at least one full day and intermittent water for 2 further days. Consequently, I find that a further rent reduction in the amount of **\$230.00** is warranted for March 2011 and I award the Tenant that amount.

The Tenant also received a rent reduction of \$20.00 for the loss of use of her stove for April, May and June 2011, however she sought a further rent reduction of \$270.00 for March, April, May and June 2011. The Tenant said she believed the loss of use of her stove de-valued the tenancy by \$100.00 per month. The Tenant also sought a rent rebate for the Landlord's failure to make repairs a kitchen sink tap and some holes in the walls (where outlets appear to have been removed), to secure the counter cabinets to the walls, and replace baseboards. The Tenant said the Landlord refused to make these repairs until she paid him. The Tenant said the balance of the compensation she sought was for the Landlord's bullying and harassment in April and May 2011 when he demanded that she pay him a rent shortfall for those months or leave. The Tenant also claimed that the Landlord wrote "slandorous" things about her in his submissions he filed for these proceedings.

The Landlord argued that he believed compensation of \$20.00 per month for the loss of use of the stove was fair because he replaced it with a hotplate and convection oven. The Landlord also argued that the repairs complained of by the Tenant were minor and that she did not insist on them being done until late in May 2011.

I find that a \$20.00 reduction in the rent for the loss of the Tenant's stove was inadequate to compensate her for the loss of that facility which was included in her rent. However, I also find that a \$100.00 reduction is excessive given that the rent included a base amount for the use of the suite plus other utilities and laundry. While the Landlord did replace the stove with a hot plate and convection oven both parties admitted that this was an inferior replacement to the stove. Furthermore, I find based on the uncontradicted evidence of the Tenant that the addition of these small appliances has had the effect of overloading an already inadequate electrical system and is causing the power to go out from time to time. Consequently, I find that the Tenant is entitled to a further rent reduction of \$55.00 per month for the loss of use of her stove for the months of April, May and June 2011 for a total of **\$165.00**. I find that the Tenant is not entitled to an additional rent reduction for March for these things otherwise she would be compensated twice for the same things.

Section 32 of the Act Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. I find that the rental unit did not comply with safety and housing standards required by law and that the Landlord decided to conceal these defects from a by-law officer rather than address them. In doing so, I find that the Landlord did not secure a counter and cabinet to the wall and left holes in the walls. I also find that the Landlord did not replace baseboards. I further find that these matters as well as a loose

kitchen sink tap was brought to the Landlord's attention in early April 2011 by the Tenant but that he refused to make those repairs when the Tenant withheld her rent. Consequently, I find that the Tenant is entitled to a further rent reduction for the Landlord's failure to make repairs for the months of April, May and June 2011 in the amount of \$75.00 for each of those months for a total of **\$225.00**.

Although the Tenant claimed that the Landlord harassed her with demands that she pay the outstanding rent or leave, I find that this conduct does not warrant an award of compensation for a loss of quiet enjoyment. Instead, I find that in the absence of a written agreement for a rent reduction, the Tenant's remedy was to pay her rent and then to make an application for dispute resolution for a rent reduction. The Tenant also argued that the Landlord made slanderous comments about her in his written submissions. While I find that the Landlord's submissions were inflammatory and "unflattering" of the Tenant, I am not persuaded that this is a matter that falls under the Act because they were made as a part of the dispute resolution proceeding and did not occur during the tenancy.

I find that there is insufficient evidence that the shower head in the rental unit was broken and had to be replaced and as a result, that part of the Tenant's application is dismissed. However, given that the Tenant left the new shower head in the rental unit, I order the Landlord to return it to the Tenant failing which she may reapply for this expense. I also find that there is insufficient evidence that internet was included in the Tenant's rent and as a result that part of her application is dismissed without leave to reapply. As the Tenant has been successful on most of her application, I find that she is also entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee for this proceeding plus \$5.32 for the cost of photographs. Consequently, I find that the Tenant has made out a total monetary award of **\$675.32**.

I order pursuant to s. 62(3) and s. 72(2) of the Act that the Parties' respective monetary awards be offset with the result that the Landlord will receive a Monetary Order for the balance owing of \$184.68.

### **Conclusion**

A Monetary Order in the amount of **\$184.68** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: July 04, 2011.

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Residential Tenancy Branch