



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: OPR, MNR  
Tenants: CNR

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both landlords and the male tenant. The female tenant called into the hearing to advise that she could not attend but that the male tenant would represent her.

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

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Sections 46 of the *Act*.

### **Background and Evidence**

The landlords provided a copy of a tenancy agreement signed by the parties on June 26, 2005 for a month to month tenancy for a monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month with a security deposit of \$550.00 paid. The landlords also provided a copy of a notification of rent increase to \$1,135.20 effective March 1, 2010.

The landlords testified that the tenants last paid rent on October 13, 2011 for the month of October 2011 and that they have not received any payments since then. The landlords also testified the tenants have been refusing any communication with the landlords. The landlords were unaware of the reasons why the tenants failed to pay rent.

The tenant testified that early in the tenancy (2006) the tenants sought to have the washer and dryer replaced; that the landlords had agreed but had the tenants buy them with a promise to reimburse the tenants. The tenant stated that the same thing happened in 2009 when it was necessary to replace the stove. The tenant went on to say the landlords have failed, to this day, to reimburse the tenants and so the tenants

applied the amount owed to the rent payable for rent for November and December 2011.

The tenant testified that he informed the landlords at the end of October that they would be starting the deductions and that the landlord did not make any demand to pay the rent; that the landlords did not issue a 10 Day Notice after the non payment of November 2011 and so he felt the landlords had accepted the deduction.

The landlords both testified that they never had such an agreement with the tenants that they provide support and maintenance on the rental unit when required; that they provided a replacement fridge in 2008 when the tenants requested; that they do not know what the tenants have done with the old appliances and that they had no knowledge the tenants were replacing appliances.

### Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As such, the burden is placed on the party making the claim, in this case the tenants, to provide sufficient evidence that an agreement had been between the parties. I find the tenants have failed to establish they had an agreement with the landlords regarding the replacement of appliances and a subsequent reimbursement for costs.

Further as to the tenant's assertion that this is an agreement outside of the tenancy agreement, I find that if it is the case then the tenants had no right, under the *Act*, to withhold any payments of rent to satisfy a debt resulting from an agreement outside of the tenancy agreement.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or tenancy agreement unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* allows a tenant to deduct all or a portion of the rent due under the following circumstances:

1. If the tenant has made an overpayment of a security deposit in accordance with Section 19;
2. If the tenant has incurred costs for emergency repairs and followed the entire protocol as outlined in Section 33;
3. If allowed through an order provided by the director pursuant to Section 72; or
4. With the landlord's written consent.

From the evidence and testimony before me I find the tenants have failed to establish they had any right under the *Act* to withhold any portion of rent out to the landlords. I therefore dismiss the tenant's Application.

Further from the testimony of both parties I accept the tenants failed to pay rent for the months of November and December 2011.

### Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,270.40** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 20, 2011.

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Residential Tenancy Branch