



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, PSF, RR, FF

### Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for unpaid rent, for the landlord to make repairs, for the landlord to provide services or facilities, to allow a tenant to reduce rent for repairs and recovery of the filing fee.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This tenancy began May 1, 2010 with monthly rent of \$1250.00 and the tenants paid a security deposit of \$625.00.

On January 5, 2012 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant testified that the January 2012 rent had been paid in full to the landlord on January 6, 2012.

The tenant stated that in May 2011 the elevator in the building started to have problems and would be out of service every couple of weeks. The tenant stated that as time went on the elevator then became out of service almost every week and then on December 15, 2011 went out of service and remained out of service until January 13, 2012.

The tenant stated that she went and spoke to the resident manager repeatedly starting in May 2011 to find out what was wrong with the elevator. The tenant stated that she continued to speak to the resident manager about the elevator and was always told that the matter had been referred to head office and was being addressed. The tenant stated that she also made calls to the head off but never received a response back.

The tenant stated that she became very frustrated that the elevator continued to be out of service and in June 2011 and again on December 26, 2011 the tenants sent a fax to the head office asking about matters related to the building and specifically the elevator.

The tenant stated that in December 2011 they finally gave the landlord notice that they would be vacating as they could not live in a building without a functioning elevator. The tenant stated that she and her husband are seniors and use of the elevator is imperative for them as tenants especially when they live on the 3<sup>rd</sup> floor.

The landlord stated that the elevator in this building is serviced on a monthly basis and did acknowledge that there were times last year when the elevator did not work. The landlord challenged the tenant's account of how often the elevator was down and stated that if the elevator had been out of service that often that he would have received a bill for additional service charges from the elevator service company and he has not.

The landlord stated that the elevator was out of service from December 15, 2011 to January 13, 2012 as the service company was waiting for a part from eastern Canada and shipping was delayed due to the holidays. The landlord stated that there was an occasion from April 2011 that he was aware of when the elevator was out of service as there was an additional charge for a service call.

The landlord also wanted to point out that the tenant's June fax states 'We are happy to see that the elevator problems are being addressed. Thank you for that.'

The landlord stated that they have been very responsive to any issues related to the elevator and the delay in service from December 15, 2011 to January 13, 2012 was out of the landlord's control. The landlord also stated that he was not aware of any other complaints from tenants in this building in regards to the elevator.

### Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenants have not met the burden of proving that they are entitled to a rent reduction for repairs.

I accept the tenant's testimony that the elevator was out intermittently starting in May 2011, however without a record of specific dates consideration must be given to the landlord statement that they would have been charged for service calls had the elevator been out of service as often as the tenant claimed. The landlord also took steps in December 2011 when extensive repairs were required and the delay in completion of these repairs was out of the landlord control as the service company was waiting for parts to arrive. Therefore this portion of the tenant's application is dismissed without leave to reapply.

As the landlord was pro-active in having the elevator repaired and the elevator is now back in service and fully operational, the landlord will not be ordered to make repairs or provide services or facilities. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the landlord's 10 day notice to end tenancy for unpaid rent, the tenants paid the January 2012 rent within 5 days of receiving the notice as outlined on the January 6, 2012 notice therefore the 10 day notice to end tenancy is no longer valid and the tenancy continues uninterrupted.

As the tenants have had some success in their application they are entitled to recovery the \$50.00 filing fee.

### Conclusion

I therefore allow the tenant's application and set aside the landlord's 10 day Notice to End Tenancy for Unpaid rent dated January 5, 2012 with the result that the tenancy continues uninterrupted.

The tenants are also to recovery of the \$50.00 filing fee. I grant the tenants a monetary order under section 67 for the amount of **\$50.00**.

If the amount is not paid by the landlord, 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 *Manufactured Home Park Act*.

Dated: January 19, 2012

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Residential Tenancy Branch