



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
                              CNR, ERP, RP, LRE, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is to cancel a notice to end tenancy for unpaid rent, for the landlord to make emergency repairs, for the landlord to make repairs, suspend or set conditions on the landlord's right to enter and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began July 15, 2011 with monthly rent of \$1100.00 and the tenants paid a security deposit of \$550.00.

On December 21, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord stated that the tenant had problems paying the rent on time from the start of the tenancy and that in late October the tenant advised the landlord that she had lost her job. The landlord stated that the rent cheque for September was returned as NSF and that in late October the tenant gave the landlord 2 bank drafts to cover the September and October rent. The landlord stated that the tenant then advised him that she had lost her job but that she would somehow manage to come up with the December rent however the December 2011 rent remains unpaid.

The tenant stated that she had not paid the rent to the landlord as there are numerous repairs that are required in the rental unit and that she had paid for the repairs out of her

own pocket when the landlord would not address the issues. The tenant stated that the furnace was broken, there is a dent on the hot water tank, there are cracked and broken windows in the porches and that raccoons are able to get in the attic. The tenant stated that she has not put any of the requests for repairs in writing and that all communication with the landlord had been verbal.

The landlord stated that he contacted the gas company after the tenant told him the furnace was unusable and the gas company advised the landlord that they had no knowledge of there being a problem with the furnace however the tenant did not have good enough credit to have the gas bill transferred into her name. The tenant maintained that she paid \$300.00 for repair of the furnace however this repair was done with out the landlord's authorization and the tenant has still not provided evidence of the required repairs or payment for the repairs to the landlord.

The landlord stated that repeated attempts to enter the rental unit to check the furnace and hot water tank have been thwarted by the tenant's refusal to allow the landlord access. The landlord stated that he made arrangements for 2 different plumbers to go to the rental unit and every time the tenant refused to let them in even though she had said she would. The tenant stated that there is hot water in the rental unit.

The tenant maintains that she became fearful of the landlord and did not want him in the rental unit as he would admonish her in front of her company or just show up at the property and let himself in. The tenant stated that the landlord entered the rental unit on November 19 and also the week prior and this was without proper notice to the tenant. The landlord countered this statement by saying that he had entered the rental unit only after the tenant had called him about the hot water tank and agreed to allow access. The landlord stated that he is ready and willing to complete any required repairs but that with the tenant denying him access to the rental unit he has not been unable to complete repairs.

The tenant stated that when she first looked at the house the landlord agreed to complete the unfinished basement and turn it in to liveable space. The landlord stated that he originally was going to live in the house but that it was too small and that his intent is to build a new house on the property next year. The landlord stated that he never said he would finish the basement and the house was advertised with an unfinished basement that could be used as a workshop or for storage.

The tenant stated that raccoons are getting in and living in the attic however the landlord said that the tenant had never been advised of this problem otherwise he would have contacted someone to remove the raccoons.

The landlord stated that as the tenant has 2 young children he is willing to let the tenant stay in the rental unit until February 15, 2012 if the tenant pays the December and January rent. The tenant stated that she has the December rent and that the January rent is not due until January 15<sup>th</sup>, 2012.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for cause and that the tenant disputed the notice in the required time period however as the December 2011 rent remains unpaid, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to an order of possession for unpaid rent and a monetary order for unpaid rent.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated December 21, 2011 is hereby upheld with the result that the tenancy will end February 15, 2012.

The tenant in their application is requesting that the landlord complete emergency repairs and complete repairs however the tenant has repeatedly denied the landlord access to the rental unit. The tenant has also not provided any evidence to the landlord or for this hearing in regards to what was/is supposedly wrong with the furnace. The tenant in her application brings additional areas of concern forward IE: broken windows, raccoons in the attic etc, however has continually not allowed the landlord the opportunity to address any of these concerns. The tenant has also not provided anything in writing to the landlord regarding what repairs are necessary. The tenant also stated that she had not paid the December 2011 rent as she had paid for repairs to the rental unit however the tenant has not provided evidence of this.

Therefore as the landlord not only has a duty to maintain the rental unit but the right to ensure that there are no serious problems in the rental unit, **I hereby ORDER that after being provided with proper notice by the landlord that the tenant allow the landlord access to the rental unit to complete any necessary repairs.**

As the tenant has continually denied the landlord access to complete repairs on the rental unit, the landlord will not be ordered to complete emergency repairs or repairs. With the conflicting testimony on when and why the landlord entered the rental unit, conditions be not be set on the landlord's right to enter however the landlord must provide proper 24 hour written notice to the tenant as outline in the *Act*.

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on **February 15, 2012 at 1:00 PM.**

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, February 15, 2012**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1575.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$1625.00**.

If the amount is not paid by the tenant(s), 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: January 12, 2012

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Residential Tenancy Branch