



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR OPR OPC MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied to cancel a notice to end tenancy for unpaid rent. Both the landlord and the tenant participated in the teleconference hearing.

I determined that the issue of the potential end of tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the landlord's application in the conclusion of my decision.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to the notice to end tenancy for unpaid rent?

Is the landlord entitled to an order of possession pursuant to the notice to end tenancy for cause?

### Background and Evidence

The tenancy began on March 1, 2009. Rent in the amount of \$1100 is payable in advance on the last day of each month. The tenant withheld \$300.15 of her rent for November 2011, and on November 4, 2011 the landlord served the tenant with a notice to end tenancy for unpaid rent.

On November 4, 2011 the landlord also served the tenant with a notice to end tenancy for cause. The tenant did not dispute the notice to end tenancy for cause, and she gave

notice to the landlord that she intends to move out of the rental unit by November 30, 2011.

*Landlord's Evidence – Notice to End Tenancy for Unpaid Rent*

The landlord frequently goes away on trips, and she leaves contact numbers for the tenant to call. The tenant also has the landlord's email address. The landlord went away on August 31, 2011 and left a note for the tenant with her email address, a telephone number for emergencies only, and also stated that the tenant could leave voicemail messages for the landlord on the landlord's cell phone. In her evidence, the landlord submitted a letter containing this information, with the date May 16, 2011 written on it and crossed out, and the date of August 31, 2011 written above it. Attached to this page was also a business card for a tradesperson.

On September 11, 2011, while the landlord was away, the tenant contacted a plumber to fix the toilet. The tenant then presented the landlord with the plumber's bill, in the amount of \$300.15. The landlord refused to pay the bill, as the tenant did not contact the landlord, the tenant was aware that the landlord regularly used a different plumber because she had coupons for her preferred plumber, and the toilet is under warranty.

The tenant acted without authority when she hired the plumber and when she deducted that amount from her November 2011 rent.

*Tenant's Response*

In the past, the landlord has always left letters with contact numbers when she has gone on vacation. The tenant did not save old letters. When she went on vacation this time she left no contact numbers at all. In her evidence, the tenant submitted two notes from the landlord. Neither the first note, dated July 28, 2011, nor the second note, dated August 31, 2011, contains any contact information.

On September 11, 2011, the tenant's toilet started bubbling out. The tenant opened the yellow pages and looked for a 24-hour plumber, because she was leaving town the next day. The plumber repaired the toilet, and the tenant paid the bill of \$300.15. The tenant presented the bill to the landlord, but the landlord refused to pay.

Analysis

Upon consideration of the evidence, I find that the tenant was not entitled to withhold rent for emergency repairs.

A tenant may deduct from rent an amount that the tenant paid for emergency repairs only in compliance with section 33 of the Act. Under section 33, a landlord is required to provide in writing the name and telephone number of a person the tenant is to contact for emergency repairs, and the tenant is required to make at least two attempts to telephone at the number provided the person identified by the landlord as the contact for emergency repairs.

In this case, I found the landlord's evidence credible, and I accept that she did provide contact numbers for emergencies in the letter submitted as evidence. The tenant did not attempt to call the emergency contact number. As the tenant did not comply with section 33 of the Act, she was not entitled to withhold the cost of the plumbing bill from her rent. The notice to end tenancy for unpaid rent is therefore valid, and the landlord is entitled to an order of possession.

The landlord is also entitled to recovery of the \$50 filing fee for the cost of her application.

As the tenant's application was not successful, she is not entitled to recovery of her filing fee for the cost of her application.

### Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The remainder of the landlord's application is dismissed with leave to reapply.

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: November 25, 2011.

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Residential Tenancy Branch