



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant    CNR, ERP, RP, RR, FF  
                                 Landlord   OPR, MNR, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to do emergency repairs and general repairs to the unit site or property, for a rent reduction and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on February 17, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on February 16, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?

Tenant:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Are there emergency repairs required to the unit?
3. Are there general repairs required to the unit?
4. Are the Tenants entitled to a rent reduction?

## Background and Evidence

This tenancy started on April 15, 2011 as a fixed term tenancy with an expiry date of April 15, 2012. Rent is \$1,295.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$650.00 on April 6, 2011 and a pet deposit of \$250.00 approximately 2 months later after they paid the security deposit.

During the start of the hearing the Tenant said they are moving out of the rental unit on March 5, 2012 and they are unable to pay the unpaid rent. The Tenants said they may need additional time to move out, but they believe they have secured a new rental unit for March 5, 2012.

The Landlord said that the Tenant did not pay rent of \$300.00 for the month of January 2012 and \$1,295.00 for February, 2012, when it was due and as a result, on February 8, 2012, he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 8, 2012 to the Tenants at the rental unit. The Landlord continued to say that he has made a mutual agreement with the Tenants to end the tenancy by March 5, 2012, which the Landlord said he submitted with his evidence package. Further the Landlord said the Tenants have not paid the unpaid rent for January and February, 2012 and he is requesting an Order of Possession for March 5, 2012.

The Landlord also said he is seeking to recover the \$50.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,595.00 in unpaid rent and the \$50.00 filing fee for a total claim of \$1,645.00.

The Tenants said they agree that they have \$1,595.00 in unpaid rent for January and February, 2012 because they are unable to pay it at the present time and the Landlord should make repairs to the unit before they have to pay the rent. The female Tenant said she tried to pay the \$300.00 of unpaid January rent, but the Landlord would not accept it.

The Landlord said that he would talk to the Tenants after the hearing about the possibilities of the Tenant staying until March 15, 2012 if they pay the unpaid rent of \$1,595.00 on or before March 5, 2012. The Tenant said they did not have the money to pay the rent.

## Analysis

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I dismiss the Tenants application as they agree they have unpaid rent that they are not able to pay at the present time. As well the Tenants said they are moving out of the rental unit on March 5, 2012 so their application for repairs to the unit is no longer an issue.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$300.00 for January, 2012 and \$1,295.00 for February, 2012 totally \$1,595.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,595.00. As well since the Landlord has been successful in this matter I also order the Landlord to recover the filing fee of \$50.00 for this proceeding from the Tenants. A Monetary Order in the amount of \$1,645.00 is awarded to the Landlord.

Further as there is a mutual agreement in writing between the Landlords and the Tenants to end the tenancy on March 5, 2012 and as the Landlord requested an Order of Possession for March 5, 2012 to support that mutual agreement to end tenancy; I grant the Landlords an Order of Possession with an effective vacancy date of March 5, 2012.



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## Conclusion

An Order of Possession effective March 5, 2012 and a Monetary Order in the amount of \$1,645.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply and the Tenants are ordered to bear the cost of \$50.00 for their application which they have already paid.

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*.

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Residential Tenancy Branch