



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, O, FF

### Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for unpaid rent and other.

Both parties participated in the conference call hearing.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began December 1, 2011 with monthly rent of \$850.00 plus utilities, the tenants paid a security deposit of \$425.00.

On April 13, 2012 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant testified that they had an agreement with the landlord whereby the landlord would reimburse the tenants for all labour and expenses associated with renovating the property which was in uninhabitable condition. The tenant stated that they have calculated the hours spent working on the property and for 4 people at \$10.00 per hour for 1393 recorded hours they are owed \$13,930.00 plus \$272.28 for gas, materials and dump fees for a total of \$14,202.28.

The landlord stated that he and the tenants had emailed back and forth regarding the cleanup of the property but that an agreement had never been reached where by the landlord would pay the tenants an hourly rate for their labour. The landlord stated that the tenants were very aware of the condition of the property as they had been on site a number of times prior to taking possession. The landlord stated that the tenants owe \$248.00 February rent, \$850.00 March rent and \$850.00 April rent for a total of \$1948.00 in unpaid rent.

The landlord referred to an email from November 4<sup>th</sup> and 5<sup>th</sup> 2011 where the tenants say they will not charge the landlord for labour and then an email from January 6<sup>th</sup> 2012 where the tenant estimates a labour charge of \$9500.00. The tenants acknowledged that they never did come to a formal agreement with the landlord where the landlord would reimburse them for their labour.

The tenants stated that they believed the February and March 2012 rent to have been paid in full as they sent the landlord materials and dump receipts for the balance of what was not paid. The landlord maintained that he did not receive any receipts until 2 weeks ago in the tenant's evidence package. The tenants stated that the address for service is very difficult to read on the tenancy agreement and the receipts make have gone to the wrong address. The landlord maintained that his calculations for the unpaid rent were accurate and the tenant's incorrect.

After continued discussion the parties agreed to mutually end the tenancy May 31, 2012 at 1:00PM. The landlord's agent verbally requested an order of possession for this same date.

### 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.

In this case the tenants have filed to dispute the notice however the \$1948.00 in rent for February, March and April 2012 remains unpaid. As there is no documentation of an agreement in writing that establishes that the tenants are allowed to reduce rent, not pay rent or that the tenants will be paid by the landlord in exchange for work on the property the landlord is entitled to an order of possession.

The landlord per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit with an order of possession date of May 31, 2012 which is the agreed to end of tenancy date.

In regards to the tenant's claim for \$14,202.28 compensation for work completed on the property, as there is no written agreement between the parties that establishes such an agreement, the tenants will not be entitled to the compensation they are seeking. Therefore the tenant's request for compensation is hereby dismissed without leave to reapply.

If the landlord wishes to seek compensation for the unpaid rent the landlord is at liberty to make an application through this office.

Conclusion

**By mutual agreement the tenancy will effectively come to an end May 31, 2012 at 1:00PM.**

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, May 31, 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.

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: May 15, 2012

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Residential Tenancy Branch