



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNDC, OLC, RP, RR, FF, OPR

### Introduction

This hearing dealt with applications from the landlords and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Although the co-tenant signed the Residential Tenancy Agreement, he was not named as an applicant or a respondent on the applications for dispute resolution or on the landlord's 10 Day Notice. The tenant confirmed that the landlord handed him the 10 Day Notice on September 8, 2012. The tenant testified that he sent a copy of his dispute resolution hearing package to the landlord by registered mail on September 17, 2012. He provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed that he received this package from the tenant. The tenant also confirmed that he received a copy of the landlord's dispute resolution

hearing package handed to him on September 21, 2012. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The parties and the co-tenant confirmed that the tenant moved from the rental unit on or about October 4, 2012. The co-tenant continues to reside in the rental unit. Both the landlord and the co-tenant expressed a willingness to discuss the possibility of allowing the co-tenant to remain in the rental unit, after the applications from the landlord and the tenant were considered.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to a monetary award for loss in value of this tenancy, for emergency repairs conducted, or for services that the landlord committed to provide but which were not provided during this tenancy? Should any other orders be issued with respect to this tenancy? Are either of the parties entitled to recover their filing fees for their applications from one another?

#### Background and Evidence

This one-year fixed term tenancy commenced on July 1, 2012. Monthly rent is set at \$1,200.00, payable in advance on the first of each month. Although the Residential Tenancy Agreement (the Agreement) identified a \$600.00 security deposit, the landlord agreed to allow the two tenants who signed the Agreement to conduct the following work on the rental unit in lieu of a cash payment of this deposit:

- *Tenant will fix and paint fence;*
  - *Fix fireplace flue;*
  - *Complete cedar siding;*
  - *Paint garage inside and out;*
  - *Fix living room window.*
- (as in original)

The parties gave conflicting testimony with respect to whether the tenants were to be credited for the \$600.00 value of this security deposit. The landlord testified that he had waived the requirement for a cash payment of the security deposit in exchange for the work that the tenants were supposed to perform on the rental unit when they moved into these premises. He said that they had not performed much of this work. The tenant testified that the tenants had done the work identified in this portion of the Agreement and the tenants were supposed to be credited \$600.00 as their security deposit for their labour in lieu of a cash payment.

The landlord's application for a monetary award of \$1,800.00 included his request for \$600.00 in unpaid rent from September 2012 and his anticipated loss of \$1,200.00 for October 2012. The tenant testified that he paid \$500.00 towards the outstanding rent by a direct deposit to the landlord's bank account on October 3, 2012 at 4:20 p.m. The landlord testified that he had not checked his bank account to determine if the tenants had made the \$500.00 payment referred to by the tenant.

The tenant entered into written evidence a copy of a September 5, 2012 letter from the tenants to the landlord in which they outlined the following list of items where the tenants were seeking immediate reimbursement or concessions in the future rent for this rental unit. The tenant's application for a monetary award of \$1,217.25 included the following items outlined in his September 5, 2012 letter:

| Item                                                                                   | Amount            |
|----------------------------------------------------------------------------------------|-------------------|
| 2 Days of Cleaning and Miscellaneous Repairs                                           | \$517.25          |
| Numerous Emergency Electrical Repairs (1 Day lost wages, materials, expenses and fees) | 400.00            |
| Repairs of Back Room and Living Room and Cleaning                                      | 200.00            |
| 1 hour of wages and materials for repair of garage lock                                | 100.00            |
| <b>Total Monetary Award Requested</b>                                                  | <b>\$1,217.25</b> |

The tenant provided no receipts, invoices or photographs with his evidence package, although he noted that he had these available. In their September 5, 2012 letter, the tenants explained their reasons for seeking repairs and compensation as follows:

*Please note that upon occupation & tenancy of the aforementioned residence, a number of outstanding conditions & issues have remained unresolved & non hazardous sub standard living condition from a dirty below standard & hazardous living condition. Not to mention the outstanding illegal drug history & stigma associated with this property in the neighbourhood.*

*In previous conversations I voiced concerns over paying standard rent for sub-standard living & agreed to do so upon the verbal agreement to move into a standard & clean property with some damage deposit concessions made due to the excess amount of uncompleted work on the property & time sensitive concerns. This agreement was not met and evident upon time of occupancy...*

Although the tenant and co-tenant testified that concerns about the condition of the rental unit were raised with the landlord after they first occupied the rental unit, they confirmed that the only written request to the landlord was the September 5, 2012 letter, issued after they failed to pay their rent for September 2012.

Analysis – 10 Day Notice and Application for Order of Possession

Section 26(1) of the *Act* reads as follows:

**26** (1) *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.*

The tenant and co-tenant testified that they did not pay the rent in full for September 2012, nor have they paid any rent for October 2012. Based on a balance of probabilities, I accept the tenant's undisputed testimony that he paid \$500.00 of the amount then owing to the landlord on October 3, 2012. However, even with this payment, \$100.00 was still owing from the \$600.00 identified as owing in the landlord's 10 Day Notice. In accordance with section 26(1) of the *Act*, I find that the tenants were required to pay their September 2012 rent when it was due.

The tenant failed to pay the September 2012 rent within five days of receiving the 10 Day Notice. Although the tenant applied pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice to cancel that Notice, the tenant has not demonstrated that he had any legal right to withhold rent for September 2012. The 10 Day Notice required the tenant and anyone on the premises to vacate the rental unit by September 18, 2012, the effective date of that Notice. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s) in accordance with the *Act*. If the tenant and anyone on the premises do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Landlord's Application for a Monetary Award

Based on the undisputed evidence before me, I find that the landlord was entitled to receive \$600.00 that was not paid towards the September 2012 rent for this rental unit. In addition, the landlord has demonstrated his eligibility to receive \$1,200.00 as of October 1, 2012.

As outlined above, I accept the tenant's sworn testimony that he has paid \$500.00 to the landlord's bank account to be applied to this tenancy on October 3, 2012. As such, I credit \$500.00 towards the rent owed by the tenant to the landlord.

Based on a balance of probabilities, I find that the tenant has demonstrated to the extent necessary that the landlord has received \$600.00 of labour from the tenants which was applied towards the security deposit identified in the Agreement. I find that the terms of their Agreement noted that work needed to be done to this rental unit at the commencement of this tenancy and that the landlord committed to allow the tenants to perform this work and to be given a credit for their labour to be applied against their security deposit. In making this determination, I reject the landlord's claim that he was not holding a security deposit because the tenants did not make any cash payment towards this deposit. I also find that the landlord has not demonstrated that the tenants failed to perform the work required according to the terms of their Agreement in lieu of a security deposit. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act* and section 38(4)(b) of the *Act*, I allow the landlord to retain all of the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, I allow the landlord to recover his filing fee from the tenant.

#### Analysis- Remainder of Tenant's Application

I have given careful consideration to the tenant's application for a monetary award and the relevant legislation, including section 32(1) of the *Act* which reads as follows:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

In reviewing this matter, I accept the tenant's assertion that the joint move-in condition inspection report of June 23, 2012 identified many deficiencies in the rental unit. While these were noted on the move-in condition inspection report, the tenants signed the Agreement that day without including any addendum requiring the landlord's repair of the items identified as deficient. However, as part of the Agreement, the landlord did

make an allowance to the tenants to enable them to conduct repairs in lieu of paying a security deposit. As noted above, this gave the tenants a credit towards the security deposit for this tenancy. This would appear to have been the allowance that the parties agreed to enter into in order to reflect the condition of the rental unit when the tenancy commenced.

The tenant and the co-tenant testified that they raised oral concerns about the condition of the rental unit to the landlord shortly after they took occupancy of the rental unit, but the landlord did not attend to their concerns. They sent no written request to the landlord to repair the premises until September 5, 2012, after they ceased paying all of their rent. The landlord testified that he was not aware that the tenants wanted items repaired until he received their September 5, 2012 letter in which they identified their claim for repairs that they had undertaken themselves.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In considering the tenant's application for a monetary award, I note that the tenant and co-tenant have provided no evidence that they made written requests to the landlord to repair various items before they took action themselves regarding these emergency repairs. The tenant provided no evidence that the landlord's written authorization was granted to conduct repairs beyond those identified in the Agreement which were allowed in lieu of their payment of the security deposit. The tenant has not provided bills, receipts, invoices or photographs to support his claim for a monetary award.

I find that the tenant and co-tenant were aware of the condition of the rental unit before they signed the Agreement. This Agreement included a provision whereby they would conduct some repairs themselves and be compensated for their work by way of a credit to be applied to the security deposit for this tenancy. While a landlord bears responsibility under section 38(1) of the *Act* to maintain the rental unit in acceptable condition, this responsibility does not enable a tenant to obtain a major upgrade in conditions that they were well aware of prior to the commencement of the tenancy. Issues of cleanliness, minor damage and mould should have been apparent to the tenants before they commenced their tenancy. They chose to enter into this tenancy

and accepted the landlord's offer to let them repair items noted in the Agreement in exchange for a cash security deposit.

Until the tenants stopped paying all of their rent, there is no documented evidence that they raised concerns regarding the condition of their rental unit to the landlord. On this basis and for the reasons outlined above, I find that the tenant has not provided sufficient evidence to demonstrate any entitlement to a reduction in monthly rent for July, August or September 2012. I dismiss the tenant's application for a monetary award for these months and for repairs undertaken by the tenants during these months without leave to reapply.

After receiving the tenants' September 5, 2012 letter, the landlord was presented with a list of uncompleted repairs that the tenant was requesting. As the landlord did not provide evidence that he has undertaken these repairs after receiving the tenant's letter, I find that the tenant has demonstrated that the value of this tenancy was reduced to a limited extent as a result of the landlord's failure to conduct repairs. For this reason, I allow the tenant a monetary award of \$100.00 for the loss in value of this tenancy as of October 1, 2012. This monetary award results from my finding that as of October 1, 2012, the landlord had failed to maintain the rental unit in an adequate state of repair after having received the tenant's written request to repair a number of items. As this tenancy is ending, this is a one-time monthly reduction in rent.

As this tenancy is ending and the tenant has already vacated the rental unit, I dismiss without leave to reapply the tenant's application for a series of orders to be applied against the landlord.

Under the circumstances, I find that the tenant is responsible for his filing fee for this application.

### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s) in accordance with the *Act*. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour against Tenant AD, the respondent, under the following terms:

| <b>Item</b>                                            | <b>Amount</b>   |
|--------------------------------------------------------|-----------------|
| Unpaid September 2012 Rent                             | \$600.00        |
| Unpaid October 2012 Rent                               | 1,200.00        |
| Less Tenant's October 3, 2012 Payment                  | -500.00         |
| Less Security Deposit                                  | -600.00         |
| Loss in Value of Tenancy for October 2012              | -100.00         |
| Recovery of Landlord's Filing Fee for this application | 50.00           |
| <b>Total Monetary Order</b>                            | <b>\$650.00</b> |

The landlord is provided with these Orders in the above terms and Tenant AD must be served with a copy of these Orders as soon as possible. Should Tenant AD fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 19, 2012

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Residential Tenancy Branch