



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 46, 67, and 72 of the *Residential Tenancy Act* (Act).

If the tenant is unsuccessful in the portion of his Application seeking to cancel the 10 Day Notice for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the Act.

### Background and Evidence

The parties agree the current tenancy began on June 1, 2011 as a 1 year fixed term tenancy that converted to a month to month tenancy on June 1, 2012 for a current monthly rent of \$671.00 due on the 1<sup>st</sup> of each month and a security deposit of \$335.00 paid on April 29, 2011.

The parties also agree the tenant had had a previous tenancy with the landlord prior to a fire that required the residential property to be vacated until repairs were made and the landlord had offered all former tenants an opportunity to enter into new tenancies after the repairs were made on the same terms as the previous tenancies.

The tenant provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2012 with an effective date of November 15, 2012 citing unpaid rent in

the amount of \$199.52. The tenant submits this is the amount paid for emergency repairs as noted in the receipt submitted into evidence for plumbing repairs.

The tenant submits that on July 17, 2012 when he turned his shower on there was no water but that when he tested the sink and toilet they were both operating. He goes on to say that he also checked in the stairwell, as his bathroom is above the stairs, to see if there was any sign of water – he saw none.

The tenant submits that he “searched the hallways on both the upper and lower floors as well as the basement and building grounds for the janitor but could not locate him or his wife.” The tenant submits there is no posted emergency contact information anywhere in the building. The landlord testified an emergency contact number is posted in the main hallway.

The tenant testified that when he could not contact the building manager he went down the street to a plumbing company and asked them to come and make repairs. He testified that the plumbing office manager told him she would have to contact the landlord to get approved to complete the work. The tenant testified he told her that would take too long and that he would pay for it if he had to.

While neither party addressed this in the hearing, in his written submission the tenant states that the owner of the plumbing company is also one of the owners of the residential property that his rental unit is in.

The landlord testified the office manager did contact the landlord and was advised they would not pay for any repairs. The landlord testified the tenant refuses to allow the building manager to enter the rental unit to make any repairs and had he contacted the building manager they would have repaired the problem for under a dollar.

### Analysis

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

Section 33 goes on to say that if the tenant has complied with the requirements under the section and has had emergency repairs completed the landlord must reimburse the tenant for the amounts paid for the repairs if the tenant gives the landlord a written account of the repairs and a receipt. In addition, the section allows the tenant to deduct

the amount paid from a future rent payment if the landlord does not reimburse the tenant.

Despite the tenant's testimony that he felt the water from his shower may have been pooling somewhere I find that he has presented no evidence to establish that there was an urgent need for repairs.

Further, I find the steps taken by the tenant to find the building managers were insufficient in that he states he looked in the hallways and other common areas. The tenant does not indicate that he went to either the building manager's offices or rental unit.

In addition, the burden of proving a claim rests with the party making the claim and when faced with testimony that is disputed by the other party it is incumbent on the party making the claim to provide additional evidence to substantiate his position.

In the case before me the landlord disputes the tenant's assertion that an emergency contact number is not posted and in the absence of any evidence from the tenant to the contrary I find the tenant has failed to establish the landlord has not posted an emergency contact number.

And finally as the tenant specifically gave the plumbing company's office manager direction not to contact the landlord to get approval, particularly when the tenant claims the owner of the plumbing company is also a part owner of the residential property and therefore his landlord I find the tenant deliberately avoided contacting the landlord to ask for emergency repairs to be completed.

Therefore, I find the tenant did not comply with the requirements under Section 33(3) to authorize emergency repairs and the landlord is not is therefore not responsible for the cost of these repairs.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

While the tenant did file an Application for Dispute Resolution to dispute the notice within 5 days of receiving the notice, I find that when it was clear the landlord did not accept that an emergency repair was necessary or that the tenant had failed to attempt to have the landlord complete the repairs the tenant should have paid the outstanding rent within the 5 days provided in the notice.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

While Section 33 provides the tenant with a right to deduct an amount from the rent for emergency repairs, when the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent in the amount the tenant was withholding I find a reasonable person would have accepted the landlord did not believe the tenant had the right to withhold the rent and would have paid the outstanding rent.

As evidenced by the tenant's Application, which included a financial claim in the amount of the repairs made, I am satisfied the tenant was aware that he had an alternate remedy to seek compensation other than by withholding the rent and as such, I find the 10 Day Notice to End Tenancy is effective.

Further, as I have found the repairs were not urgent and the tenant failed to attempt to contact the landlord to have repairs made I find the tenant is not entitled to compensation for the amounts paid for those repairs.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

Based on the above, I dismiss the tenant's financial claim for reimbursement for repairs made and as the tenant was unsuccessful in his Application I also dismiss his claim to recover the filing fee for his Application.

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: December 10, 2012.

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Residential Tenancy Branch