



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, MNDC, MNSD, RP, FF

### Introduction

This was a hearing with respect to the tenants' application to cancel a Notice to End Tenancy and for other relief, including a monetary award and repair order. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord participated with the named person who acted as his representative.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?  
Are the tenants entitled to a monetary order and if so, in what amount?  
Should repair orders be made?

### Background and Evidence

The rental unit is a house in Kelowna. The tenancy began in August 2010. The monthly rent is \$800.00. The tenants paid a \$500.00 security deposit at the commencement of the tenancy. The tenants were employed by the landlord performing construction work for his company until recently.

The tenants applied to cancel a one month Notice to End Tenancy for repeated late payment of rent. They denied that they have been late paying rent and said that the landlord's accusations of late payment are absurd because the rent has been paid to the landlord by deductions taken from the paychecks given to them by the landlord.

The tenants requested a repair order and claimed compensation from the landlord in the amount of \$9,684.54. They have claimed that the house needs extensive repairs and is not reasonably fit for habitation. The tenants said there were electrical problems and outlets throughout the house that don't work. There is a cracked foundation and the basement leaks. The tenants complained of broken windows, drafts and the expense of heating the house. They said there were baseboard heaters that did not work. The flooring is in bad shape. The shower faucet does not work and the sink leaks. The

tenants said that the outside lights and electrical outlets don't work. They also complained about infestations of rodents.

The tenants claimed the following:

- Power bill from March 10, 2011 to January 14, 2013, 50% = \$2,385.54
- Repayment of 50% of the rent for one year: \$4,800.00
- Toilet repair \$100.00
- Wood purchased at \$100 a "quart" (cord) \$1,100.00
- Security deposit \$500.00
- Cleaning garbage from garage 10 hours X 2 people at \$10.25 \$205.00
- No lawnmower, paid to maintain lawn \$300.00
- Cleaning supplies plus painting and work \$194.00

Total: \$9,684.54

The tenants said that there was an ongoing labour dispute between themselves and the landlord and the landlord's attempt to evict them is related to the labour dispute between the tenants and the landlord as their former employer. The tenants said they gave the landlord a list of necessary repairs and after they gave him the list the landlord gave them a Notice to End Tenancy

The landlord testified that the rent was set at \$1,000.00 per month, but after the tenants complained about the heating costs he reduced it by \$200.00 per month to \$800.00. He said that the tenants' rent has been taken off their pay cheques only after they failed to pay the rent on time and instead of paying rent on the first the tenants told him to deduct what was owed for rent from their pay. The landlord testified that he has made repairs when the tenants have told him there was a problem; he made plumbing repairs and replaced the hot water tank. He testified that he brought the tenants a cord wood for them to use when they complained about heating costs.

Neither the tenant nor the landlord produced a copy of the Notice to End Tenancy. The landlord did not submit any documents and did not provide any ledger or record of rent payments.

### Analysis and conclusion

I find that the landlord has not established that there is cause to end the tenancy. Rent has been paid by deduction from the tenants' wages and in the absence of records from the landlord, I am unable to determine that the tenant have been repeatedly late paying rent. Furthermore I have not been provided with a copy of the Notice to End Tenancy and therefore I have not determined that a valid Notice to End Tenancy has been given. I therefore order that the one month Notice to End Tenancy for cause be cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

With respect to the tenants' claim for damages, what emerged from the hearing is that the tenants rented a substandard house in August 2010 that was in a state of disrepair. The rent reflected the condition of the house. The monthly rental amount was reduced by \$200.00 due to the drafty condition and the higher than normal heating costs.

The tenants requested a refund of 50% of the rent for the preceding year. I do not find such an award appropriate. The tenants have not provided evidence of written requests for repairs until February of this year and they could have, but did not pursue a remedy in the form of an application for dispute resolution until the landlord served them with a Notice to End Tenancy. I accept the tenants' evidence that the house is in disrepair, but it was in this state when the tenancy began. On the evidence the house will need extensive renovations or it should be demolished; in either case the rental unit will need to be empty to repair it or to tear it down. Given the condition of the property I find that it is not appropriate to make a repair order. It will be up to the landlord to give the tenants the appropriate Notice to End Tenancy if he intends to make necessary renovations or to demolish the rental property. The tenants need to find other accommodation rather than planning to remain in the house, but I am not in a position to determine that the tenancy must end on this application.

I find that the tenants are entitled to a monetary award for their increased heating costs and for an amount to compensate them for a loss of amenities and quiet enjoyment due to the condition of the rental unit and the need for repairs. I find that the appropriate amount of compensation is \$1,600.00 and I grant the tenants a monetary order in the said amount. The tenants are entitled to recover \$50.00 of the \$100.00 filing fee for this application for a total award of \$1,650.00. The award is limited in amount because the tenants chose to rent a unit that was in disrepair and they have slept on their rights by not taking steps to enforce the landlord's obligations to repair and maintain the property until served with a Notice to End Tenancy. This monetary order may be registered in the Small Claims Court and enforced as an order of that court; alternatively if the tenancy continues, the tenants may apply the award to future instalments of rent.

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: April 8, 2013

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Residential Tenancy Branch

