



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: CNE, CNC, CNR, OLC, ERP, RP, PSF, LRE, AS, RR, FF  
Landlord: OPE, OPC, OPR, OPB, MND, MNR, MNDC, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent, compensation for damage to the unit site or property, compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notices to End Tenancy and if successful; to have the Landlord comply with the Act, regulations and tenancy agreement, for the Landlord to do emergency repairs and general repairs to the unit site or property, to provide services and facilities included in the tenancy agreement, to set conditions on the Landlord's right of entry to the rental unit, to allow the tenant to assign or sublet the unit and to allow the tenant a rent reduction.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on May 16, 2013 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 May 21, 2013 and were not serviced in accordance with section 89 of the Act, but the Landlord accepted service of the documents and requested the hearing continue.

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?

4. Is there loss or damage to the Landlord and if so is the Landlord entitled to compensation?
5. Is there damage to the unit and if so is the Landlord entitled to compensation?

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?
5. Have the Landlords provided services and facilities that are in the tenancy agreement?
6. Should there be restrictions on the Landlords' right of entry?
7. Can the Tenants assign or sublet the rental unit?

### Background and Evidence

This tenancy started on March 1, 2013 as a fixed term tenancy with an expiry date of July 31, 2013. Rent is \$1,100.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$550.00 and a pet deposit of \$225.00 in advance of the tenancy.

The Landlord said that the Tenant did not pay rent of \$1,100.00 for the month of May, 2013, when it was due and as a result, on May 3, 2013, they personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2013 to the Male Tenant at the rental unit. The Landlord continued to say that the Tenants did pay \$1,040.00 on May 9, 2013, 1 day after the 5 day limit on the 10 Day Notice to End Tenancy; therefore the Landlords made the receipt out for "Use and Occupancy only" so that the tenancy would not be re-instated. The Landlord said that since the Tenants were late in paying the rent to satisfy the 10 Day Notice to End Tenancy and that there is still \$60.00 in unpaid rent they are requesting an Order of Possession for as soon as possible.

The Landlord continued to say that they have made a monetary claim for the following:

1. Unpaid rent in the amount of \$60.00.
2. Late rent payment fee for May, 2013 of \$25.00
3. The Landlord said the Tenants' nephew and the Tenants' mother were living in the unit so the Landlord requested \$100.00 for the nephew and \$300.00 for the mother as extra people living in the rental unit. The Landlord said there is a clause in the tenancy agreement stating a \$100.00 per month for each additional occupant. The Landlords both said they have no corroborating evidence that proves the nephew and mother were living in the unit beyond their testimony.

4. The Landlord said he is claiming \$350.00 for wall damage in the unit as the Tenant's photographs show holes in the wall. The Landlord said the damage has not been fixed and the \$350.00 is an estimate from other work he has had done.
5. The Landlord continued to say the Tenants have engaged in illegal harassment of the Landlord and other tenants, which has resulted in loss rental income to the Landlord. The Landlord said he has estimated this amount as \$2,000.00. The Landlord did not supply any corroborating evidence beyond the Landlord's testimony.
6. Further the Landlord said the Tenants were doing illegal activities by selling drugs out of their rental unit. The Landlord said he is claiming \$1,000.00 as compensation for their illegal activities. The Landlord's did not provide any corroborative evidence beyond the Landlords testimony.
7. The Landlord is also claiming that second hand smoke from the Tenants affected other tenants and the Landlord. The Landlord said he is claiming \$1,000.00 for second hand smoke issues. The Landlord provided a witness to testify that he saw the Tenants smoking in the unit, but the witness testified he only smelled the smoke he did not see the Tenants smoking in the unit.

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 \$4,485.00 and the \$50.00 filing fee for a total claim of \$4,535.00.

The Tenants said they agree that they have \$60.00 in unpaid rent, but they believe that the Landlord owed them \$60.00 for unpaid work they have done at the rental unit which they deducted from the rental payment. The Tenants provided the rent receipt for May 9, 2013. The receipt indicates the Tenants paid \$1,040.00 of the \$1,100.00 rent for May, 2013 and the receipt is for **use and occupancy only**. The Tenants said they understand that there is unpaid rent of \$60.00 if the Landlord did not credit them the \$60.00 on the rent receipt. Consequently the Tenants said they understand that their application to cancel the 10 Day Notice for Unpaid rent dated May 3, 2013 will not be successful.

Further the Tenants said they understand that the rest of their application was dependant of cancelling the Notices to End Tenancy which would mean the tenancy would continue and then their requested would be addressed, but as the tenancy will end there is no point in pursuing the other items on their application. The Tenants said they understand their application will be dismissed without leave to reapply.

The Tenants continued to say that their main concern is the mold in the rental unit which they believe is a health issue. As well the Tenants mentioned that they would like monetary compensation for the conditions that they had to live in.

The Arbitrator said the Tenants have not applied for any monetary compensation in this application so it cannot be dealt with in this hearing. The Tenants are at liberty to make

an application for monetary compensation up to 2 years after the tenancy ends if they so wish to.

The Landlord said in closing that he takes pride in his rental units and that he believes the amounts of compensation he has applied for are reasonable. Further the Landlord said the Tenants testimony and evidence is not consistent and therefore he questions the reliability of the Tenants' testimony and evidence. The Landlord said the pictures the Tenant sent in are of his unit and of other units in the rental complex. The Landlord said the Tenant said the pictures are all of the Tenants rental unit which is not the case.

The Tenant said in closing that their issue is really about the mold in the unit and they want to move out of the unit for health reasons. The Tenant said all the pictures are of their rental unit and the Landlord is incorrect.

### 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 and they did not pay the May, 2013 rent within the time limits given on the 10 Day Notice to End Tenancy dated May 3, 2013.

I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$60.00 for May, 2013 and for the late rent fee for May, 2013 of \$25.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$85.00.

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.

Under s. 90 of the Act, the Tenants are deemed to have received the Notice to End Tenancy on the day it is personally delivered. I accept the Landlord's testimony that they delivered the 10 Day Notice to the male Tenant on May 3, 2013. Consequently,

the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than May 8, 2013.

I find that the Tenants have not paid the overdue rent by May 8, 2013 and although the Tenants applied for dispute resolution on May 1, 2013 they had not received the 10 Day Notice to End Tenancy for Unpaid rent until May 3, 2013. Following this the Tenants amended their application on May 21, 2013 which was 18 days after the 10 Day Notice to End Tenancy for Unpaid rent was given to them on May 3, 2013. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Further as the Tenants agree they have unpaid rent; they will not be successful in cancelling the Notice to End Tenancy for Unpaid Rent, which will result in the tenancy ending. Therefore the balance of the Tenants' application are items that would be addressed if the tenancy was to continue. As the tenancy is ending I dismiss the Tenants application without leave to reapply. In addition the Tenants verbally requested to have a monetary claim heard in this hearing. As the Tenants application did not include a monetary claim I will not hear this claim and testimony, but the Tenants are at liberty to apply for compensation up to two year after the end of the tenancy.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord said the wall repairs of \$350.00 is an estimate based on other work he has had done therefore as this repair has not been completed the Landlord cannot prove the amount of loss or verify the loss with a receipt. Consequently, I dismiss the Landlords' claim of \$350.00 for wall repairs with leave to reapply.

With regard to the Landlords' claims for additional occupants for \$400.00, second hand smoke issues of \$1,000.00 and illegal harassment and illegal activities for \$3,000.00 the Landlord has only provided his testimony and the testimony of a witness for the second hand smoke issue. The witness's testimony did not support the Landlords' claim that the Tenants were smoking in the unit. Therefore the burden of proving the claims lies with the applicants and when it is just the applicant's word against that of the respondents that **burden of proof is not met**. Consequently I dismiss without leave the additional occupants claim for \$400.00, the second hand smoke issue claim of

\$1,000.00 and the illegal harassment and activities claim for \$3,000.00 all due to a lack of evidence.

As the Landlord has only been partially successful I order the Landlord to bear the cost of the filing fee of \$50.00 which he has already paid.

### Conclusion

An Order of Possession effective 2 days after service of it on the Tenants and a Monetary Order in the amount of \$85.00 have been issued to the Landlords. 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.

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 28, 2013

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Residential Tenancy Branch