



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP (CAMPBELL RIVER) LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNR, MNDC, OLC, PSF

### Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated April 9, 2013 and for relief related to a failure of the plumbing and hot water system in the complex containing the rental unit.

The tenant also applies for more time to make the application and the landlord's representative graciously consented to an extension, though it was not apparent that one was legally necessary.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the Notice was a just one or that the tenant is entitled to any of the relief she claims?

### Background and Evidence

The rental unit is a two bedroom suite in a building. The tenancy started in February 2012. The monthly rent is \$645.00 and the landlord holds a \$322.50 security deposit.

In April the landlord served the tenant with a ten day Notice to End Tenancy dated April 9, 2013 for non-payment of an alleged \$1190.00 in rent and arrears due April 1. The tenant does not dispute that amount. The May rent has not been paid either.

The tenant says she refused to pay rent because her plumbing backed up for a total of seven days in February and further, she had little or no hot water to her suite for almost six weeks.

Additionally, the tenant claims that the clothes dryer in the communal laundry room has not been working. However, as the landlord's representative points out, that item was

not claimed in the application. I therefore decline to consider it because the landlord has not been afforded an opportunity to contest it.

The landlord's representative gave evidence about the reason for the failed plumbing and the landlord's efforts to repair it, and about the hot water problems and the ultimate discovery of a running tap and the solution.

### Analysis

As discussed at hearing, section 26 of the *Residential Tenancy Act* requires that a tenant pay her rent even if her landlord is in breach of the law or the tenancy agreement. The tenant had no lawful justification for withholding payment of the \$1190.00 claimed in the Notice. Her application to cancel the Notice must fail. As a result of the ten day Notice and by operation of s. 46 of the *Act* this tenancy ended on April 26, 2013 and the landlord is entitled to an order of possession. At hearing the landlord made a verbal request for an order of possession, as permitted by s. 55 of the *Act* and I grant that request.

I find that the tenant is entitled to recover damages for the plumbing failure and the lack of hot water. The landlord's representative argues that it was not the landlord's fault that the plumbing failed and that it took a number of days to repair it. She argues that the lack of hot water in the building for approximately six weeks was due to a tap left running in a vacant suite and, again, not the fault of the landlord. I agree that neither of these failures in the provision of services has been shown to be the result of the landlord's negligence or inaction. Further, it appears that the landlord acted in a timely and efficient manner in diagnosing and resolving the two problems, though the water issue took some time. However, this is a contractual matter and negligence, diligence or lack of it does not come directly into play. The tenant pays rent for working plumbing and hot water on demand (within reason). A landlord who fails to provide those services is in breach of contract and subject to a damages claim.

In my view, the proper measure of damages for a breach in the provision of services and facilities of this kind is the reduced value of the rental unit without the service or facility. There was no direct evidence upon which I could make a purely objective assessment of that value and so I am left with trying to make the best assessment I can in the general circumstances.

For the failure of the plumbing which also prevented the running of water in the sink, tub or toilet, which I find occurred over a total of seven days, I award the tenant \$100.00, as I estimate the premises to have been reduced in rentable value by about two thirds. I

award her an additional \$100.00 for having to bail out the raw sewage rising up in her tub and toilet.

For the lack of hot water, which I find occurred over a total of six weeks, I award the tenant \$445.00 as I estimate the premises to have been reduced in rentable value by one half.

As this tenancy has ended by operation of the ten day Notice, I decline to make any order that the landlord comply with the law or tenancy agreement or that the landlord provide any particular service or facility.

### Conclusion

The landlord will have an order of possession.

The tenant will have a monetary order against the landlord in the amount of \$645.00.

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 16, 2013

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Residential Tenancy Branch

