



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR CNC OLC RP ERP RR MNDC

### Preliminary Issues

Upon review of the Tenant's application and evidence they confirmed that once they served their original application upon the Landlord she began issuing notices to end tenancy. First they received a 1 Month Notice for cause so they amended their original application on August 2, 2013, and paid their rent that same day. Four days later they were served with a 10 Day Notice for unpaid rent that was paid on August 2, 2013. They requested that their application be amended again to include a request to cancel the 10 Day Notice that was issued on August 6, 2013. The Landlord confirmed that she was prepared to discuss the 10 Day Notice during this proceeding.

Upon consideration of the Tenants' request I find that given the circumstances presented to me it would not prejudice either party to include this request. Accordingly, the application was amended to include the Tenants' request to cancel the 10 Day Notice, pursuant to section 64 (3)(c) of the *Act*.

### Introduction

This hearing convened on September 10, 2013, for ninety minutes and again on October 4, 2013, for ninety five minutes. The hearing dealt with an Application for Dispute Resolution filed by the Tenants on July 31, 2013, and amended on August 2, 2013. The Tenants are seeking to obtain:

- an Order to cancel a 1 Month Notice for cause;
- to cancel a 10 Notice for unpaid rent;
- obtain a Monetary Order for compensation for damage or loss under the *Act*, regulation, or tenancy agreement;
- to Order the Landlord to comply with the *Act*, regulation, or tenancy agreement;
- to Order the Landlord to make repairs; and
- to Order the Landlord to make emergency repairs.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the first convening of this hearing each party was given the opportunity to provide their evidence orally prior to the hearing time expiring.

#### Issue(s) to be Decided

1. Should the Notices to end tenancy be upheld or cancelled?
2. Should the parties be issued interim Orders pending the conclusion of this proceeding?

#### Background and Evidence

The Landlord submitted a copy of the signed tenancy agreement which indicates the month to month tenancy began on November 1, 2009. Rent was initially \$800.00 per month and on October 1, 2009 the Tenants paid \$400.00 as the security deposit. Rent was reduced to \$700.00 as of April 2013 pending the resolution to issues relating to water supply, drainage issues, and outstanding repairs.

The Tenants testified that after several attempts to have the Landlord repair the property she informed them that they would have to move so her mother could move into the unit and manage the repairs. After their discussion the Landlord did not send them an eviction notice, rather she sent them a mutual agreement to end their tenancy. They stated that it is their intention to move once they have secured a suitable home but argued that they will not be bullied to move out sooner. They have been reporting the water issues to the Landlord since approximately December 2012, and despite their continued requests for repairs, the problems are not getting fixed. The Landlord continues to promise that work will be done and all she has done was have contractors give her quotes.

The Tenants submitted that they have concerns for future tenants because the property and basement are continuously saturated with water which has created a mold problem. They are of the opinion that it should not be their job to have to continue to vacuum up the water in the basement and spray mold retardant on the walls. They have purchased

a shop vac in their attempts of reducing the presence of water and mold. They have dug trenches to reroute the water flow and keep it away from the house; however the water continues to seep through the basement and pool inside and out. They are of the opinion that the excess water is coming from a broken water cistern that is located on a neighbouring vacant property, which they provided photos of in evidence.

The Tenants stated that another issue relates to their main water supply. They have a new neighbour who has added problems to their tenancy with respect to their water supply. They were told that the Landlord has some sort of easement to access water from a neighbouring water cistern and that their water supply is transported by pipes across this new neighbour's property and he wants these pipes gone. As a result, the new neighbour has been harassing them and doing things that cause their water volume to be altered. They reported this to the Landlord but it does not appear she is making any attempts to resolve this issue as they have not seen any remedy thus far.

The Landlord confirmed that she had a telephone conversation with the Tenants in June 2013 where they discussed options for the Tenants to end their tenancy and move. She was of the opinion that they had mutually agreed to end the tenancy so that her sixty five year old mother could move in and deal with repair contractors. She confirmed she did not issue a 2 Month Notice to the Tenants for Landlord's use of the property.

The Landlord did not dispute that facts that there are serious issues relating to water pooling, water entering into the house causing the foundation to deteriorate, water service access issues, water supply interruptions, and that there was a leaking roof issue which caused damage to the interior ceiling. The Landlord noted that it has been difficult to get contractors to attend the property as it is located in a remote community. She has acquired some oral quotes, over the phone, for some of the work and at this point she finds the estimates to be cost prohibitive.

The Landlord confirmed being told about the problems the new neighbour is causing the Tenants with respect to access to the only water supply. She admitted that she attempted on only one occasion to resolve the issue with the neighbour and has not followed through with contacting any municipal agency to assist in resolving the issue. Her main argument was that she does not have the money to connect the house to the municipal water supply. The Landlord wanted it noted that she does not dispute the issues; they simply have not had an opportunity to properly assess all of the issues.

The Landlord testified that she issued the 10 Day Notice for unpaid rent on August 6, 2013, four days after she received the payment for the rent. After a short discussion the

Landlord stated that she now understood the process of issuing eviction Notices and how if a Notice is issued after rent is paid it could be viewed as a form of harassment.

As a result of all the repair issues the Landlord stated that she felt she had no choice but to evict the Tenants so she can get contractors in to conduct the repairs. She sought advice from other agencies and determined that she should serve the Tenants a 1 Month Notice for repeated late payment of rent.

The Landlord submitted proof of three recent late payments or short payments of rent. She acknowledged that she had not been diligent in managing previous late payments, meaning she did not take action in the past, but felt the recent late payments would enable her to have the Tenants evicted.

The Landlord confirmed that the property had been advertised on the internet to re-rent it, just prior to this hearing and despite the required repairs. She argued that it was her mother who placed the advertisement to test the market, without her knowledge. She indicated that the advertisement was removed after she received an intervention call from the *Residential Tenancy Branch*. She indicated several times during this proceeding that she needs to have someone living at the rental property who can manage the repair contractors.

After a brief discussion the Tenants advised that considering the break down in the relationship and mounting repair issues they are actively seeking a new rental unit. At this point the hearing time was about to expire and the Tenants indicated that they needed more time to finish their submission. I informed the parties that the hearing would be reconvened during the first week of October 2013, and I issued the following interim orders:

- 1) The Tenants were ordered to reduce their October 1, 2013, rent from \$700.00 to \$400.00; and
- 2) The Landlord was ordered to seek a resolution to the interruption of the main water supply as soon as possible.

At the outset of the reconvened hearing I summarized the testimony that was presented by both parties on September 10, 2013 and turned the floor to the Tenants to update their situation and provide their closing remarks.

In summary, the Tenants indicated that prior to the past six months they had a good relationship with their Landlords. Unfortunately, the house has fallen into such disrepair that it has caused the relationship to break down. They have had to endure the

harassing behaviour of being issued eviction notices from the Landlord, who claims the property needs to be vacant so it can be repaired, only to see that the property was listed on the internet again on October 2, 2013, this time as a vacation rental. They noted that the advertisement was updated on September 30, 2013. They also advised of recent times when the Landlord and her mother show up, without proper notice, and bang on the bedroom window to wake up the male Tenant who works nights.

The Tenants wanted it noted that the Landlord has not begun working towards resolving the problem at the source of the excessive water, which is a broken cistern that is located on an adjacent vacant lot. She is simply continuing to put off the repairs.

The Tenants submitted that they spoke with the neighbour after the last hearing and they discussed the legal issues with the rights to the water supply. The neighbour advised them that he would not interrupt their water supply and they are confident that the relationship with the neighbour has been mended for the interim.

The Landlord referenced additional evidence that was submitted to September 25, 2013, after the start of this proceeding. She indicated that evidence included e-mails with the municipality and health authority regarding the water supply. The municipality has advised that the only assistance they can provide is connection to the municipal water supply. The health unit indicated that there are requirements that must be followed regarding private water supplies that feed more than one home; however, the Landlord did not indicate if she had begun the process of complying with those legislative requirements.

In closing, the Landlord did not dispute that the property was listed on the internet again for rent. She submitted that the time and money required to repair the property has become more than they can handle and they are suffering from financial hardship which puts the repair issues outside of their control.

### Analysis

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

The evidence supports the 10 Day Notice to end tenancy for unpaid rent issued August 6, 2013, was issued four days after the rent had been paid in full. Accordingly, I find the 10 Day Notice was not served in accordance with section 46 of the Act, as rent had already been paid in full prior to the Notice being issued. Therefore I find the 10 Day Notice to be invalid and it is hereby cancelled.

Section 47(1)(b) of the Act stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

The *Residential Tenancy Branch Policy Guideline # 38* provides that an arbitrator may determine that, in the circumstances where the late payments are far apart, the tenant cannot be said to be “repeatedly” late. Furthermore, a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision. In exceptional circumstances the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Upon review of the 1 Month Notice to end tenancy issued August 15, 2013, I have carefully considered the evidence submitted by both parties which included the Landlord's submission of three late payments of rent (Mar, Apr, Aug, 2013). The evidence supports that the April 2013 late payment directly related to emergency repairs while the August 2013 late payment resulted from circumstances surrounding this dispute resolution hearing process.

After careful consideration of all of the reasons for eviction discussed by the Landlord, and the Landlord's admission that she had allowed late payments in the past, I find the Landlord provided insufficient evidence to support the issuance of a 1 Month Notice to end tenancy for cause for repeated late payment of rent. Accordingly, I hereby cancel the 1 Month Notice issued for cause.

Section 32 of the *Act* stipulates the obligations to repair and maintain a rental property 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 [emphasis added].**
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The undisputed evidence supports the rental property requires repairs: (a) to stop the egress of water into the rental unit; (b) remediation of water damage and mold in the basement; (c) remediation of water damage to the exterior property; (d) repairs to possible damage or compromise to the house foundation; and (e) repairs to the sagging ceiling and/or roof. Accordingly, I find the Landlord is in breach of section 32 of the Act, as listed above, and I hereby order the Landlord to complete the required repairs no later than **February 28, 2014**.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the landlord had breached this section of the *Act*.

I accept that a neighbour has been causing a disturbance by tampering with their water supply, but that restriction was temporary in nature and not caused by the landlord. It was not the Landlord's intention that the water supply interruption would be a permanent withdrawal or restriction of those services. As a result, I dismiss this portion of the Tenants' application.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building or property would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

I find it undeniable that the Tenants have suffered, and will continue to suffer, a loss of quiet enjoyment; until the Landlord has completed the required repairs and has resolved the water supply issue with the health authority and with the neighbours. As a result, I find the Tenants are entitled to compensation for that loss.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

Based on the aforementioned, and after considering the \$300.00 rent reduction that was ordered for October 1, 2013, (\$700.00 – \$300.00), I hereby award the Tenants a further reduction in their monthly rent in the amount of \$150.00 per month for the remainder of their tenancy. For clarity, I have ordered that the Tenants’ rent be reduced to \$550.00 per month (\$700.00 – 150.00) effective November 1, 2013, until either the end of the tenancy or the completion of the above ordered repairs, whichever comes first.

The Tenants have applied for aggravated damages as compensation for the harassing behavior displayed by the Landlord.

*Residential Tenancy Policy Guideline # 16* provides that in addition to other damages an arbitrator may award aggravated damages. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.



I do not accept the Landlord's submission that she intends to have her mother move into the rental unit to manage the repairs. Her continued advertising of the unit for rent speaks to the contrary. I find the issuance of the 10 Day Notice and the 1 Month Notice to end tenancy to be an intentional, retaliatory, and intimidating response to the Tenants' application for dispute resolution. Furthermore, I find the actions conducted by the Landlord and her mother, such as knocking on the Tenants' bedroom window to wake the Tenant, when they were on the property without proper notice, ignoring the requests for repairs or intervention with the neighbour disrupting the water supply, and advertising the unit for rent, to be harassing in nature.

Upon review of the foregoing, I find the Landlord's actions, as noted above, to be a deliberate act to intimidate or harass the Tenants after they made their application to seek a remedy under the *Residential Tenancy Act*. I further find the Landlord has made a conscious choice to avoid resolving the water supply issues and the required repairs while continuing to advertise the unit for rent. Accordingly, I find the Tenants provided sufficient evidence to support their claim for aggravated damages and I award them compensation in the amount of **\$5,000.00**.

The Tenants have been successful with their application; therefore I award recovery of the **\$50.00** filing fee

### Conclusion

The 1 Month Notice to end tenancy for Cause issued August 15, 2013, is HEREBY cancelled and is of no force or effect.

The 10 Day Notice to end tenancy for unpaid rent issued August 6, 2013, is HEREBY cancelled and is of no force or effect.

The Landlord is HEREBY ORDERED to repair the rental property, as listed above, in accordance with section 32 of the *Act*, no later than **February 28, 2014**.

The Landlord is HEREBY ORDERED to comply with the *Residential Tenancy Act*, Regulations, and tenancy agreement, pursuant to section 62 of the *Act*.

The Tenants are HEREBY ORDERED to reduce their rent to **\$550.00** per month (\$700.00 – 150.00) effective November 1, 2013, until either the tenancy ends or the above ordered repairs have been completed, whichever comes first.

The Tenants have been awarded a Monetary Order in the amount of **\$5,050.00** (\$5,000.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: September 11, 2013

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Residential Tenancy Branch

