



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: OPR, OPC, MND, MNR, MNDC, FF  
Tenants: CNC, OLC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenants sought to cancel a notice to end tenancy and an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for unpaid rent or for cause; to a monetary order for unpaid rent; for damage to the rental unit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 46, 47, 55, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the monthly rent amount is \$1,700.00 and that a security deposit of \$850.00 was paid. The parties cannot agree on when the tenancy began; when rent is due; if and when the tenancy was a month to month tenancy or fixed term; or if there is a written tenancy agreement.

The landlord provided the following documents into evidence:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 2, 2013 with an effective vacancy date of October 12, 2013 due to unpaid rent in the amount of \$1,700.00 due on September 30, 2013; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 19, 2013 with an effective vacancy date of October 20, 2013 citing the tenants are repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenants have engaged in illegal activity that has or is likely to damage the landlord's property or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and the tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after written notice to do so.

The tenants confirm that they have not paid rent for the months of October or November. The tenants acknowledged that they did not apply to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on October 2, 2013.

The female tenant submits the landlord gave her a few hours notice to move out of the rental unit so the landlord could move into the rental unit; that the landlord agreed to keep the security deposit for partial payment of rent for the month of October 2013; and that the tenants would then move out when the landlord wanted to move in.

The landlord submits that when she contacted the tenants to see if they would be paying rent for the month of October the tenants told her that they would not be and that the landlord could use the security deposit as partial payment of the rent for that month.

The landlord has submitted bills for utilities including hydro; gas; and cable totalling \$1,850.00. The tenant acknowledges that they have not paid utilities but that the likely amount owing is \$500.00. The tenant asserts that the bills are wrong and that the landlord has not paid the utilities anyway.

The landlord seeks compensation in the amount of \$1250.00 for damage caused to the basement of the residential property. The landlord submits that the tenants have used the basement, that they were not entitled to access, for storage and that they had taken their dog into the basement. The landlord submits that there is damage to the doors and locks and that the carpet requires cleaning. The landlord has provided no evidence of any damage or that any damage that may exist was caused by the tenants.

### Analysis

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.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As per the tenant's testimony, I find the tenants failed to pay the full rent owing or apply to dispute the notice within the 5 days allowed under Section 46. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit.

As to the value of the amount owed to the landlord I find as follows:

- From the tenant's own testimony - \$3,400.00 for rent for the months of October and November 2013;
- In the absence of any rational argument by the tenants that the bills provided for the utilities are inaccurate - \$1,850.00 for utilities;

In the absence of any evidence of damage to the basement of the residential property or any evidence attributing any damage to the basement to the tenants I dismiss the portion of the landlord's claims for this.

As I have found the landlord is entitled to an order of possession I make no rulings or findings related to the 1 Month Notice to End Tenancy for Cause issued on September 19, 2013.

In addition, as I have found the tenancy has ended I make no rulings or findings on the tenant's Application seeking to cancel the 1 Month Notice to End Tenancy for Cause or for an order to have the landlord comply with the *Act*, regulation or tenancy agreement. I therefore dismiss the tenant's Application in its entirety.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$5350.00** comprised of \$3,400.00 rent owed; \$1,850.00 utilities owed; and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 04, 2013

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Residential Tenancy Branch

