



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RR, FF

### Introduction

The tenants apply to cancel a ten day Notice to End Tenancy dated October 2, 2013, given for unpaid rent and utilities. They also seek compensation, a compliance order and a rent reduction related to renovation and alteration work to the rental unit.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants are entitled to any of the relief requested?

### Background and Evidence

The rental unit is a basement suite in the landlords' house. The tenancy started in September 2012. There is a written tenancy agreement showing the monthly rent to be \$875.00. The tenants are obliged to pay one-third of the home's utility costs. The landlords hold a \$440.00 security deposit.

Over the first year of the tenancy the parties became close. The landlord Ms. J.C. was inclined to have a "live-in" nanny to help her with her young family and to permit her to re-enter the work force. The tenants, at least Ms. E.P., were very much in favour of the idea and may have been the first to raise it.

During the summer of 2013 the parties discussed and agreed to a re-organization and renovation of the basement whereby an existing bedroom would be carved off for the nanny's use. An area formerly a common storage room would be incorporated into the tenants' suite and a new kitchen constructed there. The parties met and discussed the plans. The tenants made some helpful suggestions.

The tenant Mr. O'C. is a drywaller. Either he or his company was offered the renovation work but he says he declined it because the landlords were not getting a building permit for the work.

The work started in early September. It was anticipated to take a few weeks but no particular finish time was set. The parties did not amend the tenancy agreement or otherwise write down the renovation arrangement. The rent was to continue at \$875.00 after the renovation but it appears the parties agreed the September rent would be reduced by \$200.00 to account for the inconvenience of the work going on in the basement suite. There was also an agreement or at least an offer to waive the tenants' share of utility charges for September, though that proposal may have come after the work started.

Mr. O'C. testified that he made it very clear that the work was to be between the hours of 8:00 o'clock in the morning and 5:00 o'clock in the evening and only during weekdays. He says he did not want to come home each day to a work zone. It appears that he was working out of town much of the time in question. The tenant Ms. E. P. freely admitted that on occasion she permitted workers to stay later to finish their jobs for that day.

On Friday, September 20, 2013 Mr. O'C returned home from working all week out of town to find the landlords' workman there after 5:00 o'clock. The worker and the landlord Mr. C.S. had stayed over to finish a job with Ms. E.P.'s permission. The tenants, or at least Mr. O'C. were not happy about the late work. They left to stay elsewhere, saying they would return to their suite the next afternoon.

It appears that work continued in the suite over the next week with no significant disagreement. However, on the evening of September 25, the tenant Mr. O'C., feeling the landlords had continued to violate the work hour agreement, hand delivered a letter to the landlords directing that the renovations were to stop immediately.

The next day the tenants posted a note on the door to their premises stating there were to be no further renovations.

On October 2, the landlords issued a ten day Notice claiming the tenants had failed to pay \$875.00 rent due October 1, 2012 and utilities of \$210.70 "following written demand on 27/09/2013."

The tenants paid the rent and it appears they paid it within the five day period prescribed by the Notice. They did not and have not paid the utilities demanded in the Notice. They have not paid any other money and the renovation work has not resumed.

At hearing the tenants argued that the landlords had violated the hours of work agreement the parties had. They argued that the landlords were building without a permit and that the landlords had removed a load bearing wall in the basement suite without providing adequate support for the upper floor and structure.

### Analysis

The ten day Notice to End Tenancy is bad on its face and I cancel it and set it aside. Section 46(6) of the *Residential Tenancy Act* (the “Act”) makes it clear that a tenant has 30 days after demand to pay utilities before a landlord may issue a ten day Notice. In this case, the demand was made only four days before the Notice.

I find I must dismiss the balance of the tenants’ claim. Lacking any written agreement between the parties, I conclude that the arrangement to have work completed each day by 5:00 p.m. was a loose arrangement, a goal rather than a strict rule. On the evidence of Ms. E. P., Mr. C.S. and the written statement of the worker, I find that every time a worker stayed past 5:00 p.m. it was with the direct or tacit approval of the tenant Ms. E.P.. Mr. O’C.’s reaction was unwarranted and extreme in the circumstances.

The tenants cannot complain that the work was done without permit. First, they knew that from the start and acquiesced. Second, it has not been demonstrated that a permit of any kind was required for this work. Third, it has not been shown that the tenants suffered any damage as a result of the lack of a permit.

The tenants have not show that the work being done is somehow substandard. They are concerned a beam is not structurally adequate. For me to agree it would require the tenants to offer up the opinion of someone expert in that area. There was no such evidence.

The tenants complain about poly hanging and dust but it has not been shown that such inconvenience is anything but the normal inconvenience one might face during such a renovation and for which inconvenience the parties negotiated a rent reduction at the start.

The tenants complain about the gap in a door from the former storage area to the outside but it appears that renovation of that area has not been completed because the tenants stopped the work.

The tenants intimate the work was taking too long. I see no merit to the charge. The work appears to have been progressing in accordance with expectation.

In summary, the tenants over reacted to a what can best be described as a minor situation and are the authors of their own misfortune, having to live in an unfinished suite. I make no reference to the damages the landlords might well have suffered and continue to suffer as a result of the tenants' "stop work" order, as the landlords have made no application for monetary relief.

### Conclusion

The tenants' application to cancel the ten day Notice to End Tenancy dated October 2, 2013 is allowed. The balance of their claim is dismissed.

The tenants were right to challenge the ten day Notice and so I grant them recovery of the \$50.00 filing fee and authorize them to reduce their next rent due by \$50.00 in full satisfaction.

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 18, 2013

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Residential Tenancy Branch

