



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenants – CNR, CNC, MNR

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; to cancel a One Month Notice for cause; for a Monetary Order for the cost of emergency repairs. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent testifies that they have not yet received the tenants' documentary evidence.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession and the tenants withdrew their application to cancel the Notices to End Tenancy.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on April 15, 2012 for a fixed term tenancy that must end on October 31, 2013. Rent for this unit was \$2,600.00 per month and was due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$1,300.00 on March 21, 2012. Copies of a tenancy agreement have been provided in evidence.

The landlord's agent testifies that the tenants failed to pay rent for December of \$2,600.00. A 10 Day Notice to End Tenancy was issued to the tenants in person on December 03, 2013. This Notice indicates that rent is outstanding of \$2,170.00. The Notice informs the tenants that they have five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on December 13, 2013.

The landlord's agent testifies that the tenants did not pay the rent and the landlord believes the tenants vacated the unit on or about January 13, 2014. The landlord seeks a Monetary Order to recover the unpaid rent of \$2,600.00 and a loss of rental income for January, 2014 of \$2,600.00. The landlord's agent testifies that she does not know what attempts were made to re-rent the unit in December or January.

The landlord seeks an Order to keep the security deposit of \$1,300.00 to offset against the unpaid rent.

The tenants dispute the landlord's claim. The tenants testify that in November the furnace malfunctioned and the tenants notified the landlord off this. The landlord lives in the States and did not get back to the tenants concerning the repair. The tenants testify that as they were without heat for three days they contacted the landlords preferred repairman to make repairs. The tenants testify that this was the repairman the landlord had requested the tenants use in the past and to deduct any cost of repairs from their rent. The landlord later got back to the tenants and informed the tenants that she had also spoken to the repairman and to go ahead with the repair. The tenants testify that as this was an emergency repair they sent the landlords the two invoices for a total of \$729.00 and deducted this from their rent for December.

The tenants testify that in April, 2013 the landlord had asked the tenants to pay an amount towards utilities to help the landlord out as the landlord had recently lost two suites. The tenants testify that these utilities were included in the rent however the tenants agreed to pay \$150.00 extra a month for utilities on the condition that their tenancy would extend until December 31, 2013. The tenants testify that when they received the landlord's eviction Notice effectively ending the tenancy on December 13, 2013 the tenants deducted the amount they had paid extra for utilities of \$1,200.00 from Decembers rent as the landlord had not abided by their verbal agreement.

The tenants testify that they vacated the rental unit on December 13, 2013 as per the 10 Day Notice. The tenants agree they owe some rent for December, 2013 but disagree with the amount indicated on the landlord's Notice.

The tenants dispute the landlord's claim for a loss of rental income for January as they had verbally agreed to end the tenancy at the end of December, 2013. The tenants refer to the landlord's copy of the tenancy agreement where the landlord has hand written in comments about the tenants paying \$150.00 towards cable/internet and gas heating. The tenants testify that these utilities were included in the rent and they did not sign or initial any changes to the agreement.

The tenants do not seek to recover the cost of emergency repairs but want it recognised that this formed part of Decembers rent.

The landlord's agent testifies that she has not seen copies of the invoices for the emergency repairs. The landlord's agent disputes that the tenants are entitled to deduct the utilities from Decembers rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for December; I refer the parties to s. 33 of the *Act* which deals with emergency repairs. If a tenant pays for an emergency repair then a tenant is entitled to deduct that amount from the next month's rent if invoices are provided to the landlord. I am satisfied with the tenants' evidence that this was an emergency repair to the furnace and that invoices were provided to the landlord. Consequently I am satisfied that the tenants were entitled to deduct **\$729.00** from rent for December, 2013.

The tenants deducted a further amount of \$1,200.00 from Decembers rent for Utilities. I have considered the tenancy agreements and find the landlords copy of the tenancy agreement has been altered without authorization from the tenants. If the parties had a verbal agreement for the tenants to pay \$150.00 extra a month towards utilities then the landlord must obtain the tenants signatures on any amendments to the tenancy agreement.

Consequently I am satisfied with the tenants' evidence that this was a verbal agreement between them as long as the tenancy did not expire before December 31, 2013. I therefore deem that the tenants overpaid the rent by \$150.00 per month from April to November to a total sum of \$1,200.00 as the landlord effectively ended the tenancy on December 13, 2013.

With regard to the landlords claim for a loss of rent for January, 2014; the party's testimony contradicts each other. The tenants testify that they vacated the unit on December 13, 2013 and the landlord's agent testifies that the tenants did not vacate until January 13, 2014. I have no corroborating evidence from the landlord to show the tenants did not vacate the unit until January 13, 2014. Furthermore a landlord is required to mitigate the loss, pursuant to s. 7(2) of the *Act*, by showing what attempts were made to re-rent the unit as quickly as possible. The landlord's agent has testified that she is unaware of the landlord's attempts to re-rent the unit. Consequently the landlord has failed to meet the burden of proof in this matter and the landlord's claim for a loss of rent for January is dismissed.

I Order the landlord to retain part of the security deposit pursuant to s. 38(4)(b) of the *Act* in satisfaction of their reduced claim. The remainder of the security deposit must be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

As both parties have been partially successful with their claim I find the landlord must bear the cost of filing their own application.

A Monetary Order has been issued to the tenants for the following amount:

Rent for December	\$2,600.00
Less cost of emergency repair	(-\$729.00)
Less overpayment	(-\$1,200.00)
Amount due to the landlord	\$671.00
Security deposit	1,300.00
Less amount due to the landlord	(-671.00)
Total amount due to the tenants	\$629.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may deduct **\$671.00** for the balance of Decembers rent from the security deposit. This leaves an amount due to the tenants of \$629.00.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$629.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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: January 28, 2014

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Residential Tenancy Branch

