



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX Kelowna  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, CNR, OPR, FF, MNR

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$2200.00, and a request for recovery of the \$50.00 filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, a request for a Monetary Order for \$2600.00, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

The issues are whether or not to uphold or set aside Notices to End Tenancy that have been given for nonpayment of rent, and whether or not the landlords or the tenants have established a monetary claim against the other.

### Background and Evidence

This tenancy began on November 1, 2013 with the monthly rent of \$1100.00, due on the first of each month.

The tenants have not paid any rent for the months of May 2014, and June 2014.

The landlord posted a 10 day Notice to End Tenancy on the tenant's door on May 2, 2014 for the outstanding May 2014 rent, and on June 5, 2014 for the outstanding June 2014 rent.

The landlord is therefore requesting an Order of Possession for soon as possible, and a Monetary Order for the outstanding rent plus is \$50.00 filing fee.

The tenant admits that he has not paid the rent for the months of May 2014, and June 2014, however he claims that he has withheld the rent because the landlord agreed to pay \$25.00 an hour for him to do renovations on the rental unit and he has done over 100 hours of renovations.

The tenant also states that he is owed money for materials and therefore he believes the landlord owes him \$2600.00 which is more than the outstanding rent.

The tenant is therefore requesting that the Notice to End Tenancy be canceled.

### Analysis

I have reviewed the evidence provided by the tenant and I find that there is no evidence that the landlord ever agreed for the tenant to deduct money from the rent for work done.

It does appear that there was an agreement between the landlord and the tenant for the tenant to do some work for the landlord however there is nothing that ties that work to the tenancy agreement and therefore it's an independent labour contract.

The Residential Tenancy Act has no jurisdiction over independent labour contracts between the landlord and the tenant if there is nothing in that agreement that ties it to the tenancy agreement.

Therefore it is my finding that the tenant did not have the right to withhold rent and I will not set aside the Notice to End Tenancy.

I have therefore issued an Order of Possession to the landlord and an Order for the outstanding rent plus the filing fee.

As stated above the Residential Tenancy Act has no jurisdiction over the tenant's monetary claim and therefore the tenants will have to pursue that claim through some other jurisdiction.

### Conclusion

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

I have issued a Monetary Order to the landlords in the amount of \$2250.00.

The tenant's application to cancel the Notices to End Tenancy is dismissed without leave to reapply.

I decline jurisdiction over the tenant's monetary claim.

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: June 25, 2014

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Residential Tenancy Branch

