



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR MNDC OLC LAT

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 06, 2014, and amended on May 14, 2014, by the Tenant. The Tenant filed seeking to cancel a 10 Day Notice issued for unpaid utilities; to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; an Order to have the Landlords comply with the Act, regulation or tenancy agreement; and to authorize the Tenant to change the locks to the rental unit.

The parties appeared at the teleconference hearing 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.

Upon review of the service of documents the Landlords confirmed receipt of the Tenant's evidence and stated that they did not serve the Tenant with copies of their evidence as they thought the *Residential Tenancy Branch* would send her copies.

Not serving the other party with copies of their evidence is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenant has not received copies of the Landlords' evidence I find that evidence cannot be considered in my decision. I did however consider the Landlords' testimony and the Tenant's evidence and testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 10 Day Notice issued May 9, 2014 be set aside or upheld?
2. Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on January 1, 2014 and is set to expire on June 30, 2014. The Tenant is required to pay rent of \$1,000.00 on the first of each month plus a monthly rate towards the cost of electricity, natural gas, and water utilities. No security deposit was required to be paid.

The Landlords testified that the Tenant paid \$200.00 per month for January and February 2014 utilities and has not paid anything towards March, April or May utilities. A 10 Day Notice for unpaid utilities was posted to her door on May 9, 2014 and she currently owes \$510.00 for utilities based on the adjusted monthly rate of \$170.00 (3 months x \$170.00).

After a brief discussion the Tenant testified that she stopped paying for utilities in March 2014. She also noted that she will be moving out in three days on May 31, 2014, as she was not sure of the outcome of this proceeding. After a review of her Application for Dispute Resolution, she confirmed that her requests for orders to have the Landlords comply with the Act, regulation or tenancy agreement, and her request to change the locks were no longer required and she proceeded with her testimony for monetary compensation.

The Tenant submitted evidence relating to pest control treatment for the presence of bed bugs, which was conducted at her unit on February 13, 2014, at the cost of \$960.00. The Tenant confirmed that she had initiated the contact with the pest control company to come and provide her with an assessment. She then asked her Landlords to pay for the treatment and when they refused she went ahead with the treatment and paid for it herself.

The Tenant argued that she has a small child and therefore she could not have bed bugs in her unit as they transport diseases. The Tenant said she had to get the treatment done as it was an emergency. She also noted that most of the furniture was provided by the Landlords therefore the bed bug treatment was the responsibility of the Landlords. The Tenant stated that she could not wait for a hearing before having this situation resolved and went ahead with the treatment because it is the Landlords' responsibility to provide pest control.

The Landlords confirmed that they had provided the Tenant with some furniture but argued that the previous tenant never complained about the presence of bed bugs. Furthermore, they noted that the Tenant had been occupying the rental unit since

December 2013 and there were no complaints about bed bugs until mid February, two months later.

In closing, the Tenant confirmed that she had been occupying the unit since December 2013.

#### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case, despite the Tenant filing an application to dispute the 10 Day Notice issued May 9, 2014, she has decided to end her tenancy and vacate the unit as of May 31, 2014. Accordingly, I grant the Landlord an Order of Possession.

Section 33 of the Act provides that a tenant may have emergency repairs made only when **emergency repairs** are needed, as defined by the Act. [Section 33 of the Act has been copied at the end of this decision for further review].

Section 32 of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

*Residential Tenancy Branch Policy Guideline # 1* provides that for maintenance of the rental unit and property the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

Given the ability of bed bugs to lie dormant for several months, jump from one article to another and to travel with unsuspecting hosts, I cannot determine with any certainty whether the bed bugs were resident at the beginning of the tenancy or they came later.

In determining the Tenant's claim I must consider if both parties upheld their requirements under the Act, Regulation, and tenancy agreement. The Tenant is required to pay rent while the Landlord is required to provide the Tenant with quiet enjoyment of the unit. If the Tenant is deprived of the full quiet enjoyment through no fault of their own, the Tenant may be entitled to damages, even when there has been no negligence on the part of the Landlord. The parties are also required under section 7 of the Act to ensure they do whatever is reasonable to minimize the damage or loss.

The Tenant confirmed that she had not paid money towards utilities since March 2014, which leaves an accumulated balance owing of \$510.00.

After careful consideration of the foregoing, and the Tenant's documentary evidence from the pest control company, I find the Tenant is entitled to reimbursement for the cost of pest control for the treatment of bed bugs in the amount of \$960.00. That being

said I find the Tenant has been partially compensated from her deduction or failure to pay utilities for the last three months in the amount of \$510.00. Accordingly, I grant the Tenant a monetary order in the amount of **\$450.00** (\$960.00 - \$510.00).

### Conclusion

The Landlords have been granted an Order of Possession effective **May 31, 2014, after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Tenant has been awarded a Monetary Order in the amount of **\$450.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do 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: May 30, 2014

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Residential Tenancy Branch

## Emergency repairs

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

