



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Suns Rivers Bend Holding Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The named landlord attended the hearing and represented the landlord company. One of the tenants also attended representing both tenants.

The parties provided evidentiary material in advance of the hearing to the residential Tenancy Branch and to each other, however the tenant advised that he only received the landlords' evidence the day before the hearing. The landlord stated that he had not received any evidence from the tenants. The tenant also advised that the tenants' evidence was sent by certified mail to the landlords on July 15, 2014 and a search with Canada Post has revealed that someone signed for it on behalf of the landlords. Parties are required to give evidence at least 5 days before the hearing, and documents given by mail are deemed to be received 5 days after they were sent. In the circumstances, I am not satisfied that either party has complied, and none of the evidence is considered in this Decision.

### Issue(s) to be Decided

- Should the notice to end tenancy for unpaid rent be cancelled?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of water and cooking facilities?
- Should the tenants be permitted to reduce rent for repairs, services or facilities agreed upon but not provided, and more specifically for loss of water and cooking facilities?

- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to maintain the rental unit?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2012 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlords.

The landlord further testified that he went to collect the rent on May 1, 2014 and was told by the tenants that they didn't have the money. The landlord returned on May 10, 2014 and the tenants wanted the landlords to forgive rent for May. The landlord disagreed but didn't receive any rent. The landlord again attended the rental unit on May 22, 2014 and the tenants gave him a post-dated cheque, dated June 1, 2014 that had clearly marked on it that it was for June's rent.

On May 29, 2014 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice is dated May 29, 2014 and contains an expected date of vacancy of May 9, 2014 for unpaid rent in the amount of \$800.00 that was due on May 1, 2014. The landlord agrees that the date of expected vacancy is incorrect.

The tenants have not paid any rent since the issuance of the notice and are now in arrears the sum of \$2,400.00 for May, June and July, 2014.

The landlord also testified that when he collected rent on April 1, 2014 the tenants advised that the stove was broken. The landlord found another, but does not recall the date and has not provided a receipt.

The tenant testified that the new landlord took over in September, 2013 and no one came to collect rent until December. The landlord was out of country for 2 months.

The tenant further testified that he called the landlord on May 27, 2014 and left a message on the landlord's answering device. The tenants wanted to discuss a reduction in rent.

On May 28, 2014 the landlord showed up and the tenants gave him a cheque for \$800.00 but he refused it and gave it back. The tenant testified that the landlord won't take a cheque for rent and won't give receipts. When the landlord returned the cheque, he gave it back with a notice to end tenancy. The landlord has not discussed it since but told the tenants that he wanted his uncle to move in.

The tenant also testified that the rental unit had no water for the first 10 days of July, 2014 and none during the period of May 6 to the 10<sup>th</sup> or 12<sup>th</sup>. The landlords had purchased this portion of property from a person who still owns another portion and also owns the water access. That person told the tenant that the landlords are supposed to get their own water, and the water was cut off because the landlords weren't paying for it. Attempts to have that person testify were unsuccessful. The tenant also testified that the landlord has installed 3 pumps for the water in about 1 ½ months.

On March 15, 2014 the tenants asked the landlord to replace the stove and install fire detectors. The landlord replaced the stove on April 20, 2014.

The tenants apply for a monetary order in the amount of \$800.00 as a reduction in rent.

In rebuttal, the landlord denies that the tenants were without water for that long, and denies that he owes the previous owner for water, and denies that the previous owner cut off the water for unpaid water bills.

### Analysis

Firstly, with respect to the notice to end tenancy, the *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement even if the landlord has not complied with the *Act* or the tenancy agreement. The *Act* also states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the parties have testified that the landlord refused the cheque and I am satisfied that he did so because the tenants marked on it that it was for June's rent. The landlord could have given a receipt for May's rent and served a notice to end tenancy for June's rent. I find that the landlord refused money for rent and then issued a notice to end tenancy. Therefore, I cancel the notice and the tenancy continues.

With respect to the balance of the tenants' application, the onus is on the tenants to establish that damages have resulted in the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant testified that the landlord was advised on March 15, 2014 that the stove wasn't working, and the landlord testified that he first heard about it on April 1, 2014 when he went to collect the rent. The tenant testified the stove was replaced on April 20, 2014 but the landlord didn't have a date. I find that there is no question that the stove needed replacing; no one disputes that. However, I also find that the tenants have failed to establish the length of time they were without a stove. I find that the landlord learned of it on April 1, 2014 and it was replaced on April 20, 2014. The tenant did not testify that the tenants had to eat meals out of the home for any of that time period, and I accept that a stove was included in the rent. I find that the

tenants have established a reduction in rent payable of a nominal amount and I grant \$100.00.

I further find that the tenants have failed to establish how long they were without water. The tenant testified that it was from May 6 to the 10<sup>th</sup> or the 12<sup>th</sup> and for the first 10 days of July. I find that testimony to be very vague and not supported by any evidence, and the tenants' application for a monetary order for no water is hereby dismissed.

I do, however, accept that the tenants have been without water for some time, and I order the landlord to comply with the *Act* by maintaining the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and more particularly to ensure running water to the rental unit at all times.

### Conclusion

For the reasons set out above, the notice to end tenancy issued on May 29, 2014 is hereby cancelled and the tenancy continues.

I hereby order the tenants to reduce a month of rent by \$100.00 for loss of use of the stove.

I hereby order the landlords to comply with Section 32 of the *Residential Tenancy Act* by maintaining the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and more particularly to ensure running water to the rental unit at all times.

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: July 24, 2014

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Residential Tenancy Branch

