



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord's application: OPR, OPB, MND, MNR, MNSD, FF

Tenant's application: CNR, MNR, OLC, RP, RR, FF

### Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The landlord applied for an order for possession and a monetary order for unpaid rent. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and requested other remedies, including repair orders, an order that the landlord comply with the *Residential Tenancy Act*, a rent reduction and unspecified compensation. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. Each party submitted documents and photographic evidence.

### Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent dated August 21, 2014 be cancelled?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to directing that the landlord comply with the Act or perform repairs?

Is the tenant entitled to a rent reduction, or to any other relief?

### Background and Evidence

The rental unit is a house in Chilliwack. The tenancy began on April 1, 2014 for a one year term. Monthly rent is \$1,200.00. The tenant paid a \$600.00 security deposit at the start of the tenancy. The landlord testified that she performed renovations to the bathroom at the tenants request at the start of the tenancy. She said that the tenant complained about a leaky bathtub faucet and she agreed to pay for a new faucet. The tenant said that her brother would replace the faucet for free. The tenant was supposed to provide a receipt for the faucet. The landlord did not receive a receipt and the tenant

did not pay the full rent for July. The landlord received \$670.00 by direct deposit on July 7, 2014. The tenant did not pay rent for August. On August 21, 2014 the landlord went to the rental unit to find out what was going on. She served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The tenant gave her a receipt in the amount of \$78.39 for a faucet and another receipt in the amount of \$380.71 for paint and painting supplies. The landlord said that she viewed the rental unit on August 21<sup>st</sup> and discovered that the bathroom renovation performed at a cost of \$840.00 had been ripped out and the faucet had not been replaced. She said that the tenant had painted the living room, but nothing else and she had removed all of the cabinet doors in the kitchen. The landlord testified at the hearing that the tenant has paid no rent since July, but she continues to occupy the rental unit.

The landlord claimed unpaid rent up to and including rent for October as well as reimbursement for her invoice for bathroom repairs.

In the tenant's application filed on August 23, 2014, she applied to cancel the 10 day Notice to End Tenancy and requested various other orders, including a repair order, and order that the landlord comply with the *Residential Tenancy Act* and a rent reduction.

The tenant testified that the landlord took her evidence of expenditures and receipts without permission. The tenant said that the rental unit was unliveable and that is why she has not paid rent since July. Although she continues to occupy the house and her belongings are still there, the tenant said she has been "couch surfing" and staying with friends because there is mould and problems with insects and rodents. The tenant said she has told the landlord about the problems but nothing has been done to fix the problems. The tenant did not submit any written requests to the landlord asking for repairs. In her written documents she included a statement from another person, C.F. who stated that he had a verbal agreement with the landlord to complete bathroom repairs for the cost of materials and labour. The landlord denied that there was such an arrangement. She submitted photographs that she claimed showed that the bathroom of the rental unit had been damaged and not repaired.

### Analysis

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section

43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 33 of the Act sets out the matters that qualify as emergency repairs. The section provides that:

**"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.

Before a tenant may undertake emergency repairs first contact the landlord to request the repairs and give the landlord a reasonable time to make the repairs. Before a landlord will be liable to reimburse a tenant for emergency repairs the tenant must claim reimbursement and give the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I do not find that the work undertaken by the tenant or on her behalf constituted emergency repairs. I find that the tenant was not entitled to withhold rent and I therefore find that there is no basis to cancel or set aside the 10 day Notice to End Tenancy that was personally served to the tenant on August 21, 2014. Rent has not been paid since July. The effective date of the Notice to End Tenancy has passed and the landlord is entitled to an immediate order for possession.

With respect to the landlord's monetary claim, I make no award to the landlord at this time for damage to the rental unit. I find that the claim is premature and it is dismissed with leave to reapply after the tenant has moved out and the landlord has ascertained what costs have been incurred that the landlord can show were the result of damage

caused by the tenant. The landlord is entitled to a monetary award for unpaid rent in the amount of \$4,130.00 being rent in the amount of \$530.00 for July and \$1,200.00 for each month thereafter.

Because the tenancy has ended I make no orders for repairs or for a rent reduction. The tenant did not seek a monetary award in her application. If the tenant contends that she is entitled to reimbursement for work or repairs to the rental unit pursuant to an agreement with the landlord, she has leave to apply for a monetary award.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$4,130.00 for the outstanding rent for July, August, September and October. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$4,180.00. I order that the landlord retain the security deposit and interest of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,580.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application for repairs and a rent reduction is dismissed without leave to reapply.

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: October 22, 2014

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Residential Tenancy Branch

