



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC ERP RP CNR OPT AAT OPR MNR FF

### Introduction

This hearing first convened on November 21, 2014, pursuant to the tenant's first application, for orders for repairs and emergency repairs, an order that the landlord comply with the Act and for monetary compensation. On that date, after determining that no emergency repairs were required at that time, I adjourned the hearing and issued an interim decision.

On November 24, 2014 the tenant applied to cancel a notice to end tenancy for unpaid rent, as well as for other orders. On November 28, 2014 the landlord applied for an order of possession pursuant to the notice to end tenancy and monetary compensation for unpaid rent. These applications were scheduled to be heard before another arbitrator on December 18, 2014. On that date, the tenant requested and the arbitrator granted an adjournment. The second and third applications were joined to be heard with the first application.

On January 5, 2015 the hearing reconvened. The tenant and the landlord participated in the teleconference hearing and provided affirmed testimony.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the three applications in the conclusion of my decision.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

The tenancy began on March 1, 2104, with monthly rent of \$3500 due in advance on the first day of each month. The tenant did not pay rent for November 2014, and on November 19, 2014 the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant subsequently did not pay rent for December 2014 or January 2015.

The tenant stated that there was a water leak in the main room of the rental unit, and he contacted the landlord by email, as she was not available by telephone. The tenant stated that he did not receive a reply from the landlord, and he decided to withhold rent to apply toward any repair costs. The tenant stated that he had to pay the repair company \$500 and the landlord did not reimburse the tenant for that amount.

The landlord stated that the tenant did not hire anyone to do any repairs, and he did not provide the landlord any receipts.

### Analysis

Upon consideration of the evidence, I find that the tenant was not entitled to withhold rent. In some circumstances, a tenant may deduct from rent an amount that the tenant paid for emergency repairs. The tenant may only do so if all of the following conditions, as set out under section 33 of the *Residential Tenancy Act*, are met:

- emergency repairs are needed;
- 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;
- following those attempts, the tenant has given the landlord reasonable time to make the repairs;
- the tenant has paid for emergency repairs to be made;
- the tenant has claimed reimbursement for those amounts from the landlord; and
- the tenant has given the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, the tenant did not provide sufficient evidence that he paid for emergency repairs, claimed reimbursement for those amounts or gave the landlord a written account of the emergency repairs accompanied by a receipt.

As the tenant was not entitled under section 33 to withhold rent, the notice to end tenancy is valid. I find that the tenancy ended on November 29, 2014, the effective date of the notice to end tenancy, and I grant the landlord an order of possession.

### Conclusion

I grant the landlord an order of possession effective two days from service. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the tenancy has ended, the portions of tenant's applications regarding repairs, emergency repairs, an order that the landlord comply with the Act, an order of possession for the tenant and an order allowing the tenant to access the rental unit are dismissed without leave to reapply.

The monetary claims of both parties are dismissed with 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: January 5, 2015

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Residential Tenancy Branch

