



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

Tenants' application filed made December 14, 2015: CNR; MNDC; MNSD; FF; O

Landlord's application made December 29, 2015: OPR; MNR; MND; MNSD; MNDC; FF

### Introduction

This Hearing was convened to consider cross applications. The Tenants seek to cancel a Notice to End Tenancy for Unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; "other" orders; and recovery of the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent and damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing and were provided the opportunity to be heard, present evidence and to make submissions.

### Preliminary Matters

Rule 2.3 of the Residential Tenancy Rules of Procedure states that for disputes to be combined on an Application for Dispute Resolution they must be related. I find that that the Tenants' request for compensation for damage or loss under the Act, regulation or tenancy agreement is not sufficiently related to the Tenants' request to cancel the Notice to End Tenancy. I further find that the Landlord's requests for a monetary award for damages and compensation of damage of loss under the Act, regulation or tenancy agreement are likewise not sufficiently related to the Landlord's request for an Order of Possession for Unpaid Rent. For these reasons, I dismissed those portions of the parties' applications **with leave to reapply**.

The Hearing continued with respect to the Tenants' application to cancel the Notice to End Tenancy for Unpaid Rent, and the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent and setting off the security deposit.

At the outset of the Hearing, the Tenant RS requested an adjournment. He stated that his wife, the Tenant NS, had been admitted into hospital on February 2, 2016. He submitted that NS had information that was crucial to the Tenants' Application and to the Tenants' disputing the Landlord's Application. RS's explanation was vague with respect to what information NS had that was so crucial to their Application. RS did not provide me or the Landlord with documentation confirming NS's hospitalization or when she might be expected to be discharged.

The Landlord stated that the Tenants have not paid rent for December, 2015, or January and February, 2016. The Landlord objected to an adjournment and stated that he believed that the Tenants were stalling.

Rule 7.9 of the Rules of Procedure provide:

### **7.9 Criteria for granting an adjournment**

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I have considered the oral submissions of both parties and dismiss RS's application for an adjournment. Tenants are jointly and severally responsible under a tenancy agreement. Either Tenant should be in a position to represent the other in a Hearing. I find that under the circumstances given by the parties, it is unlikely that an adjournment would result in resolution of the issues. The parties' applications for damages have both been dismissed with leave to reapply and therefore the only matters left to decide are with respect to the Notice to End Tenancy for Unpaid Rent. I also find that an adjournment would cause considerable prejudice to the Landlord.

### **Issues to be Decided**

- Should the Notice to End Tenancy be cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to unpaid rent for December, 2015 and January and February, 2016?

- Is the Landlord entitled to apply the security deposit towards partial satisfaction of his monetary award?

### **Background and Evidence**

RS stated that the rental unit is the subject of a foreclosure proceeding and that an assignment of rents has been ordered by the Court.

The Landlord's agent DG acknowledged that the rental property is foreclosed, but stated that the mortgage holder has not required the Tenants to pay rent to the mortgage holders directly and is satisfied that the Landlord continue to collect the rent. DG stated that the rental unit has been sold and that the Tenants' non-payment of the rent is jeopardizing the Landlord's rights.

RS provided the Residential Tenancy Branch with a large binder on January 29, 2016. The Landlord stated that the Tenants have not served the Landlord with any documentary evidence. The Landlord testified that the Tenants didn't even serve the Landlord with their Notice of Hearing documents. He stated that he only happened to find out that the Tenants were disputing the Notice to End Tenancy when he filed his Application for an Order of Possession and was told by the information officer that the Notice was being disputed.

The Tenants' binder contains 8 tabs and 258 pages. It was not considered, as the Tenants did not serve the Landlord with a copy and did not provide a copy to the Residential Tenancy Branch within the time frame required by the Rules of Procedure.

RS acknowledged that he has not received a demand from the mortgage holders requiring the Tenants to pay their rent directly to the mortgage holders. He also acknowledged that rent has not been paid since December, 2015.

The Landlord posted the Notice to End Tenancy to the Tenants' door on December 9, 2015, for \$2,350.00 in unpaid rent that was due on December 1, 2015. The Tenants acknowledged receiving the Notice on December 9, 2015. RS stated that he has not paid rent because he was without a working furnace for 6 months of the tenancy and was also waiting for a Decision on this Application.

The Landlord testified that any requested repairs were completed. RS confirmed that he does not have an Order from the Director allowing him to deduct any or all rent.

Section 33 of the Act defines "emergency repairs" as follows:

**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.

### **Analysis**

RS did not provide testimony with respect to any “emergency repairs” which the Tenants had paid for, or whether the Tenants had followed Sections 33(3) and 33(6) of the Act with respect to requesting emergency repairs and providing the Landlord with receipts for the cost of repairs.

Section 26 of the Act states:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

Section 46 of the Act provides:

#### **Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.
- (6) If
  - (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
  - (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Tenants may or may not have a valid claim for compensation from the Landlord, but at the time that the rent was due on December 1, 2015, I find that the Tenants had no right under the Act to deduct any of the rent.

The Tenants' remedy would have been to make an Application for Dispute Resolution seeking an Order from the Director that they could deduct a portion of the rent for repairs, services or facilities agreed upon but not provided, or seek another Monetary Order for compensation for damage or loss.

I find that the Notice to End Tenancy issued December 9, 2015, is a valid Notice.

**The Tenant's application to cancel the Notice is dismissed.**

**I find that the tenancy ended on December 19, 2015.** The Tenants are overholding and the Landlord is entitled to an Order of Possession effective two days after service of the Order upon the Tenants. However, during the Hearing, the Landlord requested an Order of Possession to be **effective 1:00 p.m., February 15, 2016**, in order to give the Tenants more time to move out.

The Landlord did not provide a copy of the Court Order(s), and therefore I find that I have insufficient evidence with respect to whom the Monetary Order for unpaid rent

should be given (i.e. the Landlord or the mortgage holder, or someone else). Therefore, the Landlord's application for a monetary award for unpaid rent is dismissed with leave to reapply. The security deposit must be applied in accordance with the provisions of the Act.

I make no order with respect to recovery of the filing fee to either party.

### **Conclusion**

The Tenants' application to cancel the Notice to End Tenancy is **dismissed**. The remainder of the Tenants' application is **dismissed with leave to reapply**.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., February 15, 2016**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The remainder of the Landlord's application is **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: February 03, 2016

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Residential Tenancy Branch

