



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT CNR OPR MNR MNDC OLC PSF RPP RR RP

### Introduction

This hearing dealt with applications from both the landlord\_ and the tenant\_ under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and to recover the filing fee for this application pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing including both tenants and a representative for the landlord's company. Both parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

Preliminary Issue: Service and Application to Cancel 10 Day Notice

The tenant's application to cancel the landlord's 10 Day Notice to End Tenancy was submitted on March 17, 2016. The male tenant testified that he and his co-tenant received the landlord's 10 Day Notice on March 8, 2016. A text message between the parties confirmed March 8, 2016 as the date the tenants received the 10 Day Notice.

When a tenant applies to cancel a notice to end tenancy with respect to unpaid rent, the *Act* and the Notice itself provide that the tenant must either pay the outstanding rent or file an Application for Dispute Resolution within five days of receiving the 10 Day Notice to End Tenancy. The tenants did not make application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice nor did the tenants pay any outstanding rental amount. Therefore, in accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 16, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession pursuant to section 55(1) of the *Act*.

Given my finding that this tenancy is at an end, I find that the tenants' applications for an order requiring the landlord to comply with the *Act*, an order to the landlord to provide services or facilities required by law and an order to the landlord to make repairs to the rental unit are moot. These applications are dismissed without leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and to recover the filing fee for this application?

Are the tenants entitled to a rent reduction for repairs left undone and for an order for repairs to the unit?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy began on June 1, 2015 as a month to month tenancy with a rental amount of \$800.00 payable on the first of each month. The landlord provided sworn undisputed testimony that the tenants did not pay a security deposit at the outset of this tenancy.

The tenants testified that, after a brief period in the residence, they requested a walk-through condition inspection with the landlords. The tenants testified that they had both fallen through the floor of the unit at different times and required medical attention. The tenants did not submit any medical documentation with respect to their injuries but did submit photographic evidence of injury.

The tenants also testified that the plumbing was an ongoing issue throughout the tenancy. The landlord testified that he attempted to send a plumber to the tenants' rental unit on several occasions but that the tenants would not allow the plumber in the unit. The landlord provided no documentary evidence with respect to the contracting of plumber services.

The tenants testified that the rental unit has mould, decrepit flooring, asbestos, pests and a faulty electrical box. The tenants testified that they did not provide written or verbal notice to the landlord with respect to any of these issues. The tenants submitted some photographic evidence of pests in the unit and a state of disrepair or lack of upkeep. The tenants submitted that their rent should be substantially reduced in light of the many deficiencies within the rental unit.

The tenants also submitted that they had significantly priced items, including snowboard equipment and snowboards in the shed on the rental property but that these items, totalling approximately \$ , were thrown out by the landlord. The tenants provided online print-outs to suggest the cost of these items new but no receipts for the items and no documentation of their purchase.

The landlord testified that the tenants have exaggerated the value of the items in the shed (that it was merely refuse, garbage and old, broken items) and that he was told by a family member that they could be disposed of.

### Analysis

Both tenants and landlords are under an obligation to care for the residential property and rental unit itself. The tenants testified that the rental unit was in a state of disrepair. However, they did not meet their obligation as tenants to report the need for repair to the landlord during the course of the tenancy. Beyond photographic evidence that the unit was unclean and not well maintained, the photographs do not clearly show whether the tenant is responsible for failing to keep the unit sufficiently clean or whether the landlord is responsible for some more substantial work to repair the unit. The tenants did not provide documentation of requests to the landlord in an effort to have him make

repairs. Based on the lack of action by the tenants, I find that the landlord is not required to provide a rent reduction or a monetary order to the tenants in lieu of a rent reduction. The tenants testified that they had both fallen through the floor of the unit at different times and required medical attention however they did not submit any medical documentation with respect to their injuries but did submit photographic evidence of injury. The lack of sufficient evidence linking the tenants' injuries to the condition of the rental unit and medical confirmation of the nature of their injuries, I find that the tenants have provided insufficient information to support their claim for compensation for injury or loss as a result of the condition of the rental unit and lack of repair by the landlord.

The landlord provided undisputed testimony that he attempted to send a plumber to the tenants' rental unit on several occasions but that the tenants would not allow the plumber in the unit. Again, the tenants have provided insufficient evidence to support a claim that the landlord did not make repairs or attempt to make repairs at their request.

The tenants did not provide written or verbal notice to the landlord with respect to any of the tenancy issues that they now raise. The tenants submitted some photographic evidence however without further supporting documentary evidence showing their attempts to have these issues resolved by the landlord during the course of the tenancy, I find that the evidence submitted by the tenants is insufficient to meet the test of section 67 when seeking a monetary order: in this case, the tenants have not shown that the state of the rental unit is as a result of action or lack of action by the landlord. I find that the tenants are not entitled to a rent reduction.

The tenants also submitted that they had significantly priced items, including snowboard equipment and snowboards in the shed on the rental property but that there was no documentation of these items' purchase in photographic or other form. Therefore, there is insufficient evidence to document the existence and value of those items.

The tenants did not dispute that rent was unpaid. In fact, the tenants testified that they did not pay rent as a result of the issues they raised above. Given the requirements of the Act and pursuant to section 26(1) that the tenant must pay rent when rent is due regardless of any other claims or circumstances, I find that the landlord is entitled to recover the unpaid rent in the amount of \$1600.00 (2 months).

Conclusion

I dismiss the tenant's application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the amount of \$1600.00 in favour of the landlord.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 13, 2016

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Residential Tenancy Branch