



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR ERP RR MNR FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The tenants applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; an order that the landlord complete emergency repairs.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to a rent reduction as a result of emergency repairs and/or loss of quiet enjoyment of their residence? Are the tenants entitled to an order for repairs?

### Background and Evidence

This month to month tenancy began on January 15, 2015 with a rental amount of \$1350.00 payable on the first of each month. The landlord continues to hold a \$675.00 security deposit paid by the tenants at the outset of the tenancy. Tenant SP testified that there is no written tenancy agreement between the parties.

The tenants testified that their rental property is infested with rats. The tenants provided photographs to show rats and evidence of rats both in the interior and the exterior of the residential premises ("the rat problem"). The landlord does not dispute that there is a pest problem on the property.

On August 2, 2016, the landlord attended to the rental unit when he did not receive August 2016 rent. Tenant SP testified that rent was withheld to force the landlord to meet with the tenants regarding the rat problem. She provided undisputed sworn testimony that she and her co-tenant had made several verbal requests of the landlord from January 2016 to August 2016 regarding the rat problem. Tenant SP testified that, when the landlord attended to collect the rent, she provided a letter demanding that the rat problem be addressed. She testified that the landlord left with the letter and returned with a 10 Day Notice to End Tenancy for Unpaid Rent.

Both tenants testified that they did not intend to permanently withhold rent from the landlord but that they wished to speak to the landlord in person as he had continuously ignored their verbal requests for him to address the rat problem. Tenant SP testified that she told the landlord that they would pay rent that day (August 2, 2016) but that the landlord would not listen to their request or accept payment.

At one point, the landlord testified that he had made several attempts to attend to the residence to inspect and assess the rat problem prior to August 2016. At another point, the landlord testified that he had only been given proper information about the rat problem on August 2, 2016. The landlord testified that he has not taken any steps regarding the rat problem as of the date of this hearing. He testified that the tenants are very difficult to speak to and get angry with him.

The landlord testified that the tenants have not paid rent for August, September or October 2016 as of the date of this hearing. The landlord applied to recover the unpaid rent from the tenants.

The tenants testified that they will pay the outstanding rent but that the landlord has complicated the matter by telling a third party payee that they have moved out. That third party would normally pay their rent but the tenants provided undisputed testimony that, after August 2, 2016, the landlord advised the third party payee that the tenants no longer resided there. Therefore, the tenants will require confirmation of their tenancy to pay the rent. The tenants submitted that they have spent time and money in addressing the rat problem themselves buying traps and poison as well as replacing items destroyed by the rats. The tenants testified that their rent should be reduced as a result

of the rat problem in the residence, the restrictions of use and enjoyment of the rental unit and the landlord's failure to take steps to address the problem.

### Analysis

Section 26(1) of the *Act* establishes 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." In this case, the tenants claim a right to deduct or withhold rent based on the living conditions in the rental unit and a failure of the landlord to address those conditions.

There is no dispute of the fact that the tenants did not pay August 2016 rent when it was due or within five days of receiving the 10 Day Notice to End Tenancy. As well, the tenants did not make their application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days results in a presumption that the tenants have accepted the end of the tenancy. In this case, this requires the tenants to vacate the premises and therefore, I find that the landlord is entitled to an Order of Possession for the rental unit.

I find that the landlord is also entitled to receive an order for unpaid rent in August, September and October 2016 in the amount of \$4050.00. The tenants did not dispute that they continued to reside in the rental unit and that they have continued to withhold rent. It is incumbent on the tenants (with proper documentation from the landlord) to ensure that the third party payee provides rent to the landlord while they continue to reside in the rental property. The landlord testified that he continues to hold a security deposit of \$675.00 plus interest from January 15, 2015 to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

With respect to the tenants' application for emergency repairs, I accept their testimony that is supported by their photographic evidence to show that their rental unit is infested with rats. According to Residential Tenancy Policy Guideline No. 1,

*The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health,*

*cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ....*

I accept the testimony of both tenants that they maintain a clean and sanitary rental unit. Their photographic evidence supports their testimony, despite the indication of a rat problem. The photographs show clean floors, walls and other areas of the residence while they portray the need for rat traps and the closing off of access routes for the rats to get into the rental unit. The landlord is responsible for ensuring health and safety for the residence. The rats represent both health and safety concerns for the residents of the rental property. I find that he has not met this obligation with respect to the property, as evidenced by both the testimony of the tenants and their photographic evidence. Further, I note that the landlord did not dispute the condition of the residence or the fact that there is a rat infestation: he merely testified that actions of the tenants have exacerbated the situation. I accept the testimony of the tenants with regard to their attempts to have the landlord address the rat problem. Based on the conflicting testimony and lack of dispute of the testimony of the tenants, I do not accept the landlord's testimony that the rats are a result of action or inaction by the tenants.

I accept the testimony of both tenants supported by their evidentiary submissions that their unit has been infested with rats since January 2016, I find that the tenants are entitled to a rent reduction from January 2016 to the date of this decision. Further, I find that the landlord was advised of the rat infestation prior to the written notice provided by the tenants in August 2016; that he has taken no steps to address this rat problem; and that he has been negligent in failing to address his obligation to the tenant and the property under the Act. Based on these considerations, I find that the tenants are entitled to a retroactive rent reduction of \$337.50 per month for 10 months totaling \$3375.00.

As the tenants currently reside in the rental unit and will continue to do so for a period of time and as the rat problem raise health concerns, I issue an order that the landlord provide pest control services to the tenants' residence on or before October 17, 2016. I further order that, if the landlord fails to provide pest control services, the tenants may deduct \$200.00 from November 2016 rent.

As the tenants currently reside in the rental unit and will continue to do so for a period of time and as the debris in the yard impacts the rat problem, I issue an order that the landlord remove the debris (including appliances) on the exterior of the property at the tenants' residence on or before October 14, 2016. I further order that, if the landlord fails to remove the debris, the tenants may deduct a further \$150.00 from November 2016 rent.

By way of further explanation, the tenants may reduce their November 2016 rent by a total of \$350.00 if the above matters are not addressed by the landlord within the time required.

As the landlord and tenants were both successful in their applications, I find that both parties will bear the cost of their own application.

As a result of consideration of both the landlord's and tenants' application, I find that the landlord is owed \$4050.00 by the tenants and the tenants are owed \$4050.00 by the landlord. Therefore, neither party is entitled to a monetary order in this case.

<b>Items</b>	<b>Owed to Landlord</b>	<b>Owed to Tenants</b>
Unpaid Rent: August, September, October 2016	\$4050.00	
Retroactive Rent Reduction: January – October 2016		\$3375.00
Less Security Deposit retained by landlord		\$675.00
<b>Amounts</b>	<b>\$4050.00</b>	<b>\$4050.00</b>

### Conclusion

The landlord is provided with a formal copy of an Order of Possession effective December 15, 2016. 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.

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 7, 2016

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Residential Tenancy Branch