



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: MNR OPR MND FF  
Tenant: CNR ERP MNDC MNR PSF RP FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application was received at the Residential Tenancy Branch on October 13, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities;
- a monetary order for damage to the unit, site or property; and
- an order granting recovery of the filing fee.

The Tenants’ Application was received at the Residential Tenancy Branch on October 5, 2016 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord make repairs to the rental unit;
- an order that the Landlord provide services or facilities required by law; and
- an order granting recovery of the filing fee.

The parties attended the hearing on their own behalves. All parties giving oral testimony provided a solemn affirmation.

According to the Landlord, his application and documentary evidence were served on the Tenants by regular mail. The Tenants acknowledged receipt of the Landlord’s documentary evidence. However, on behalf of the Tenants, J.C. noted that one package, received at the Residential Tenancy Branch on November 15, 2016, and containing evidence relating to by-law

infractions, was received late and that the Tenants have not had an opportunity to respond. Accordingly, as this evidence package was not served in accordance with the Rule of Procedure, it has not been considered further in this decision.

The Tenants testified they sent the Landlord their Application package and documentary evidence by registered mail. The Landlord acknowledged receipt and confirmed he had had sufficient opportunity to review and consider it.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Are the Tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
6. Are the Tenants entitled to a monetary order for the cost of emergency repairs?
7. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
8. Are the Tenants entitled to an order that the Landlord make emergency repairs for health or safety reasons?
9. Are the Tenants entitled to an order that the Landlord make repairs to the rental unit?
10. Are the Tenants entitled to an order that the Landlord provide services or facilities required by law?
11. Are the Tenants entitled to an order granting recovery of the filing fee?

#### Background and Evidence

The Landlord acknowledged there was no written tenancy agreement between the parties when the tenancy began. However, he testified that when the issues at the heart of this dispute arose, his insurer advised him to reduce the agreement to writing and submit it with his claim, which he did. The Landlord provided a copy of the written tenancy agreement, signed by all parties, with his documentary evidence. Although the Tenants signed the tenancy agreement, they alleged it is a fraudulent document. I have addressed these allegations below.

Regardless, all parties provided affirmed testimony confirming the tenancy began in the first week of March 2016. Rent in the amount of \$1,800.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The Landlord described recent events that gave rise to the Landlord's Application. He stated that on August 25, 2016, a fire broke out in the kitchen of the Tenants' rental unit. The Landlord testified that he was at work at a local convenience store when the Tenant A.C. came into the store and advised him there was a fire in the rental unit. He took the fire extinguisher from the store and put out the fire. The local fire department also attended to clear smoke out of the rental unit.

According to the Landlord, the fire was caused by the Tenants while cooking with oil. In support, the Landlord provided a copy of an incident report from the local fire rescue service which stated: "Cause of Incident: - residents were cooking oil on the stove and the oil ignited."

According to the Landlord, the fire did not render the rental unit uninhabitable. Rather, the Landlord stated he has asked the Tenants repeatedly to move their belongings from the damaged area so that it could be repaired through his insurer. It was not his intention to end the tenancy. However, issues arose with respect to the access to the rental unit by workers, delaying the repairs. The Landlord submitted a copy of an email from B.P., a project manager. In it, B.P. wrote: "As you know, we have encountered several issues with access and co-operation from your tenant at [rental unit address]...This has been an ongoing issue right from the outset of this fire." As of the date of this hearing, the repairs have not been completed.

The Landlord requested to recover the \$1,000.00 insurance deductible payable to clean and repair the rental unit following the fire. In support, he provided a letter from the independent insurance adjuster, dated August 29, 2016. The letter confirms the amount of the deductible as claimed by the Landlord.

In addition, the Landlord testified the Tenants did not pay rent when due on October 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2016 (the "10 Day Notice"). According to a Proof of Service form submitted by the Landlord, the 10 Day Notice was served on the Tenants by posting a copy to the door of the rental unit on October 2, 2016. The Landlord also confirmed the Tenants have not paid rent for November 2016, and that \$3,600.00 currently remains outstanding. Although the Tenants stated they are living in a trailer on the property, the Landlord indicated the Tenants still use the rental unit and that their belongings are still there. The Landlord also testified that a number of neighbours have come into the convenience store in which he works to advise him the Tenants are still accessing the rental unit on a regular basis.

In reply, the Tenants alleged fraud on the part of the Landlord. The Tenants say they were forced to sign the written tenancy agreement or the repairs would not be completed. In the

written submissions of the Tenant A.C., she wrote: "We were forced to sign a rental agreement for the insurance company...Is this not fraud?"

In addition, the Tenant J.C. proposed an alternative explanation for the cause of the fire. He suggested that water dripping from the hood over the stove may have caused the fire. This theory was repeated in the written submissions of the Tenant A.C., who wrote: "...was cooking at the time but water drips through the hood fan on to the stove or the sparking hood fan or the defective burner and the electrical problems could have easily been the problem." The Tenant J.C. submitted the Tenants should not be held responsible for a fire hazard caused by the Landlord's failure to maintain the property. The Tenants did not refer me to any documentary or photographic evidence in support of their theory.

The Tenants acknowledged rent has not been paid as alleged by the Landlord. The Tenant J.C. advised that the Tenant A.C. has health issues and has been hospitalized since the fire occurred. Specifically, the Tenant J.C. testified that the Tenant A.C. is allergic to certain fumes, particularly from fire extinguishers, and that she is susceptible to coma if exposed. The Tenant J.C. also alleged his children have experienced health concerns. As a result, they say they have not been able to return to the rental unit. The Tenants did not submit any independent documentary or other evidence confirming the health issues experienced by the Tenant A.C. or their children.

With respect to access to the property, the Tenants testified during the hearing that they have no problem with providing access to the rental unit as long as the Landlord gives 24 hours' notice.

In light of my findings below, I find it was not necessary for me to consider the Tenants' Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* states that tenants must pay rent when due whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, the Landlord and Tenants agree rent has not been paid for the months of October and November 2016. However, I find there was insufficient evidence before me to satisfy me the Tenants had a right to withhold rent from the Landlord, although the Tenants may have believed they had an entitlement to do so. Accordingly, I grant the Landlord a monetary order for unpaid rent in the amount of \$3,600.00.

As rent was not paid when due on October 1, 2016, the Landlord served the Tenants with the 10 Day Notice on October 2, 2016, by attaching a copy to the door of the rental unit. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. In light of my finding above that rent has not been paid when due, and that the Tenants did not have a right to withhold rent, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

Further, section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

In this case, I am satisfied that the fire was caused by one or both of the Tenants and that the Landlord has incurred a loss as a result. As per the Landlord's oral testimony and the documentary evidence submitted, I am satisfied the Landlord has established a loss of \$1,000.00, which is his insurance deductible. Although efforts have been made to access the rental unit, the Tenants have not been cooperative. The repairs have not been completed three months after the fire.

As the Landlord has been successful, I find he is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application.

The Landlord has also requested that the \$900.00 security deposit held be applied to any monetary order I make, which I allow.

Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$3,800.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
October rent:	\$1,800.00
November rent:	\$1,800.00
Insurance deductible:	\$1,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$900.00)
<b>TOTAL:</b>	<b>\$3,800.00</b>

The Tenants alleged the written tenancy agreement submitted by the Landlord is a fraudulent document that was obtained by “force”. The Tenants suggested either that the tenancy agreement should not be relied upon, or that their allegation should impact the outcome of the hearing in some way. However, I find there is insufficient evidence before me to conclude this document is fraudulent or was obtained by force, or that such a finding would have any impact on my Decision. I note the parties agreed on several key terms of the tenancy.

### Conclusion

The Landlord is granted a monetary order in the amount of \$3,800.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

In light of my findings above, the Tenants’ Application 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: November 28, 2016

---

**Residential Tenancy Branch**