



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR (Landlord's Application)  
                                CNR, MNR, MNDC, MNSD, ERP, RR, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on October 19, 2016 and by the Tenant on October 14, 2016.

The Landlord applied for an Order of Possession for unpaid rent. The Tenant applied for the following reasons:

- To cancel a notice to end tenancy for unpaid rent;
- For the cost of emergency repairs;
- For money owed or compensation for loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement;
- For the return of the Tenant's security deposit;
- For the Landlord to make emergency repairs;
- For the Landlord to make repairs to the rental unit;
- To allow the Tenant to reduce rent for services and repairs agreed upon but not provided; and,
- To recover the filing fee from the Landlord.

### Preliminary Issues

The Landlord and Tenant appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and each other's small amount of documentary evidence which was served prior to this hearing.

The Landlord confirmed during the hearing that the issue to be decided on his Application was his request for an Order of Possession only. The Tenant confirmed that he was still residing in the rental unit and wanted to cancel the notice to end tenancy. Therefore, I find the Tenant's Application for the return of his security deposit is premature and is hereby dismissed with leave to re-apply.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to cancel the notice to end tenancy for unpaid rent?
- Is the Tenant entitled to repairs and emergency repairs to the rental unit?
- Is the Tenant entitled to monetary losses in this tenancy?

Background and Evidence

The parties agreed that this this tenancy began on May 1, 2012 on a month to month basis. Both parties provided a copy of the signed tenancy agreement which requires the Tenant to pay rent in the amount of \$1,300.00 on the first day of each month. The Tenant paid a security deposit of \$650.00 which the Landlord still retains.

The Landlord testified that the Tenant paid full rent in the amount of \$1,300.00 for the first month of the tenancy. The Landlord explained that he was contacted by the Tenant after the onset of the tenancy who informed him that the rental unit had mold throughout due to leaky plumbing issues and that there were a number of other repairs that needed to be done; the Tenant also complained about faulty appliances. The Landlord testified that the Tenant proposed that he complete the remediation work and repairs to the rental unit in exchange for reduced rent. However, no fixed amount was agreed upon.

The Landlord explained that he was a distant Landlord and was undergoing ongoing medical treatment so he allowed the Tenant to complete the work and allowed him to deduct the costs he incurred from rent each month. The Landlord testified that he knew that the amount the Tenant was reducing from his rent each month was not consistent with the work the Tenant was doing, but the Landlord did not have the time and energy to deal with this issue at that time.

The Landlord testified that the Tenant continued to pay reduced rent throughout the tenancy for differing amounts each month based on his own determination of what he was going to be paying as rent. The Landlord testified that he had a discussion in October 2016 with the Tenant who failed to pay him any rent for October 2016. The

Landlord testified that he got sick and tired of the Tenant making reduced rent payments on his own determination that he decided to end the tenancy.

As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") by registered mail on October 11, 2016. The Notice was provided into evidence and shows a vacancy date of October 31, 2016 due to \$2,000.00 in unpaid rent. The Landlord testified that Tenant had made reduced rent payments of rent before October 2016 and then he never paid any rent for October, November or December 2016.

The Tenant testified that from the onset of the tenancy, he noticed that the rental unit was infested with mold and required multiple repairs. The Tenant testified that he wrote out a quote for him to carry out the remediation work and repairs and provided this to the Landlord. The Landlord then agreed that the Tenant could reduce the rent for the material and labor he was performing.

The Tenant explained that he provided receipts and invoices for the costs to the Landlord each month and deducted an amount from the rent to reflect the costs incurred to him. The Tenant confirmed that he kept noticing repairs throughout this tenancy, which he would correct, and then deduct that amount from rent. The Tenant also confirmed that he did not have anything in writing to reflect this agreement for him to make deductions in this manner during the tenancy.

The Tenant only provided one invoice into evidence for the amount of \$1,298.06 for material he had purchased on May 15, 2016. The Tenant testified that he provided receipts to the Landlord each month but he was not in possession of these receipts because he had given the originals to the Landlord and had not retained a copy of them. The Tenant writes on the material invoice he provided into evidence that he had already given the Landlord \$1,000.00 in receipts. The Tenant claims \$6,000.00 in work he completed during this tenancy.

The Tenant testified that he attempted to discuss the issue with the Landlord at the start of October 2016 in which he said to the Landlord that he was not going to pay rent anymore because he needed a formal agreement from the Landlord in writing regarding the repairs he was completing and the amounts he was to be deducting from rent. The Tenant explained that the Landlord became angry because he started to dispute the repairs the Tenant was completing and the amounts he was deducting from rent. The Tenant confirmed receipt of the 10 Day Notice on October 12, 2016 and confirmed that he had not paid any rent for October, November or December 2016.

The Landlord stated that the Tenant had no consent from him to withhold rent entirely for October, November and December 2016 or for the amount of the invoice provided into evidence. The Landlord stated that he did not want mutually agree to end the tenancy with the Tenant or let the tenancy continue.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** the landlord complies with the Act unless the tenant has authority under the Act to withhold or make a deduction to rent. Section 33 of the Act does allow a tenant to make deductions from rent for emergency repairs. But the process a tenant must follow in order to make the deduction for emergency repairs is very specific and is outlined in the Act 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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) 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;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Having examined the 10 Day Notice, I find the contents complied with the requirements of Section 52 of the Act. I also accept the undisputed evidence that the Tenant received the 10 Day Notice on October 12, 2016. Therefore, I find the Tenant failed to dispute the 10 Day Notice within the five day time limit provided for by Section 46(4) (b) of the Act.

Based on the evidence before me and on the balance of probabilities, I make the following findings in this matter. Firstly, I accept that the failure of the Landlord to address the issue of the reduced rent payments the Tenant was making for repairs and remediation work for approximately four years, leads me to conclude that the Tenant was given permission to make deductions from his rent throughout this tenancy. However, the exact deductions to be made by the Tenant each month are in dispute by the parties. In the absence of a written agreement which provides for the exact amount the Tenant was allowed to make or how the Tenant was to make/calculate the deductions each month, I am unable to conclusively determine the rent amount that was payable each month during this tenancy. Neither did the Tenant provide evidence of the repairs that were required nor sufficient invoice evidence to verify all the work he claims he completed.

In this case, I find that the Tenant's failure to pay any rent for October 2016 caused the Landlord to look to the remedies provided by the Act to deal with this issue. The Tenant provided insufficient evidence before me to show that he had been given permission by the Landlord to withhold rent for October 2016 as the parties were in dispute at that time on the amount the Tenant was allowed to deduct. I find that a failure of the Landlord to consent to an agreement in writing on the repairs and deductions to be made going forward from October 2016 onwards is not sufficient authority for the Tenant to withhold rent for October, November and December 2016.

I find that the service of the 10 Day Notice by the Landlord to the Tenant put the Tenant on sufficient notice that the Landlord did not consent to the Tenant withholding rent for October 2016. At this point, the Tenant would have been obligated to pay the Landlord

full rent if the dispute about the repairs could not be resolved and for the Tenant to seek deductions from rent by making an Application prior to withholding all rent.

I also find that there is not sufficient evidence before me from the Tenant that he had authority to withhold rent for October 2016 for emergency repairs. In this respect, the Tenant provided no supporting or corroborating evidence of the actual repairs he had completed in this tenancy. Neither, did the Tenant provide sufficient evidence that he had provided a receipt for emergency repairs for an amount that would have enabled him to withhold all of October 2016 rent and onwards. The only evidence the Tenant relies on in this respect is one invoice which is dated for May 2016. The Tenant provided insufficient evidence that he had presented this invoice to the Landlord for reimbursement and that the Landlord allowed him to specifically deduct this amount from October 2016 rent which was disputed by the Landlord.

Based on the foregoing, I find that I am unable to cancel the 10 Day Notice and the Tenant's Application in this respect is dismissed. The Landlord is accordingly issued with an Order of Possession to end the tenancy. As the Tenant is in rental arrears pursuant to the written tenancy agreement for October, November and December 2016, the Landlord is entitled to a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the tenancy is to shortly end, the Tenant's Application for the Landlord to complete repairs and emergency repairs to the rental unit is now moot and is dismissed without leave to re-apply.

With respect to the Tenant's monetary claim for emergency repairs, loss under the Act, and a reduction in rent, I make the following findings based on the following test. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the above test and the above findings I have made, I find the only evidence the Tenant provides to corroborate his monetary claim of \$6,000.00 is an invoice in the amount of \$1,298.06 for materials purchased in May 2016. I find this is not sufficient evidence for me to conclude that the Landlord owes the Tenant \$6,000.00 in compensation as this amount has not been proven or verified.

In this case, the evidence before me is that the Tenant deducted rent each month from April 2012 onwards throughout this tenancy for work he had completed to the rental unit. Therefore, I find that on the balance of probabilities, the Tenant was receiving reimbursement for this work through rent deductions as he made no Application to claim otherwise during the tenancy until he disputed the 10 Day Notice. I therefore conclude that the Tenant has failed to provide sufficient evidence to justify this monetary claim which is hereby dismissed.

### Conclusion

The Landlord's Application for an Order of Possession for unpaid rent is granted. The Tenant's Application is dismissed without leave to re-apply. The Tenant may re-apply for the return of his security deposit after the tenancy has ended. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 07, 2016

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Residential Tenancy Branch