



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNR, MNDC

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order including compensation for emergency repairs. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on October 11, 2016, the landlord did not appear nor did he file any written evidence. The tenants did file written evidence and provided proof of service of all three evidence packages on the landlord.

### Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 4, 2016 valid?
- Should the tenants be granted a monetary order and, if so, in what amount?
- Should any other order be made?

### Background and Evidence

The rental unit is a two bedroom suite located on the lower level of a two level house. The landlord lives in the balance of the home. The suite is about 600 to 700 square feet. The smaller of the two bedrooms is actually under the upper level deck – in other words, the floor of the deck is the ceiling of the second bedroom. This room is about 80 square feet.

The tenant is self-employed. His training was as a welder but now he does landscape and drainage work. The tenant first met the landlord when the landlord called the tenant about some drainage issues on the property.

When the tenants looked at the suite the landlord told them that the second bedroom had been completely flooded. It was obvious at that viewing that the previous tenants were not using that room. There was also some damage to the living room. The landlord promised that the second bedroom could be reinstated to a usable condition and promised that the repairs would be completed by the move-in date of July 1.

The parties signed a standard Residential Tenancy Branch tenancy agreement on June 2, 2016. The agreement provided that this would be a one year fixed term tenancy continuing thereafter as a month-to-month tenancy. The monthly rent was set at \$850.00. The agreement did not specify on which day of the month the rent was due. The tenants paid a security deposit of \$400.00 and a pet damage deposit of \$200.00.

The agreement also provided that the tenants were to pay one third of the utilities. The tenants say that this was later adjusted to one quarter because of the number of people living upstairs (eight).

There was an addendum to the tenancy agreement which provided that:

1. "All work on the suite from water damage will be completed by the move-in date of July 1, 2016 so that both rooms are useable and safe.
2. Any work done by the tenant [ ] will be paid to [the tenant] at a rate of \$20.00 per hour and if agreed upon by all parties the payment may be taken off the rent.
3. Tenants are allowed to use back yard, it is a shared yard with owner, must clean up after use."

All parties signed the addendum.

In June the tenant did some excavation work on the property and replaced one of the perimeter drains. The landlord paid him for this work.

When the tenants and their seven-year-old daughter took possession of the rental unit nothing had been done. The tenants say a move-in inspection was conducted and a move-in condition inspection report completed but they were never given a copy.

In July, at the landlord's request, the tenant tore out the carpet from the small bedroom.

At the end of July the tenant reported to the landlord that the previous tenants still had the keys to the rental unit and the lock did not work. The landlord told the tenant to fix it. The tenant paid \$22.39 for the lock and spent 1.5 hours installing it. He claims \$52.39 for this repair. He has given the landlord the bills but the landlord has refused or neglected to pay it.

In August, again at the landlord's request, he started tearing out the drywall in that room. He worked until he saw the extent of the mold growth. At that point he told that landlord that this was specialized work beyond his experience and abilities, and refused to do any more work in this room. The tenant says he did 12 hours work on this room for which he has not been paid.

The tenants paid the July and August rent in full. In September the tenants paid \$425.00 in cash. A credit of \$425.00 credit for work previously done by the tenant was applied to the balance of the rent.

In September the landlord asked the tenant to do some work on the fences and to haul trash to the dump. In an e-mail dated September 6 the landlord confirmed that he would pay the tenant \$20.00 per hour for his work.

Also in September the poor drainage on the property became a greater issue. Water was flooding in the front of the house, by the entrance to the rental unit, and in the driveway. The landlord instructed the tenant to do whatever was necessary to fix the drainage. The landlord paid for the rental of the necessary equipment and the materials used for the repairs. The tenant's evidence is that he worked for 25.5 hours on this project. The landlord told him he would pay for the work at the end of the month.

In the same month the landlord asked the tenant and another young man to remove the deck so it could be rebuilt by a carpenter. The purpose of the rebuilding was to stop the leaking into the second bedroom.

The tenant worked on that project for a total of 11.5 hours on September 21 and September 23. The landlord promised to pay for the work at the end of the month.

The tenant testified that at a certain point he realized that the work was structural and this was beyond his training, experience or ability. He told the landlord this and recommended that the landlord get an experienced contractor to do the work. The tenant arranged for a local contractor to visit the site and talk to the landlord. The contractor explained everything that had to be done to the landlord, including the requirement to obtain permits. The landlord was unhappy with the information because it meant that the cost of the project was going to be more than he had anticipated.

The young man hired by the landlord continued to work on the deck in the evening. Meanwhile the ceiling in the bedroom leaked worse and worse and one of the ceiling boards started to collapse. Eventually the landlord hired a carpenter to oversee the project.

The tenant became concerned that the project was not proceeding in a safe manner and called the building inspector. A stop work order was placed on the project because there were no permits for the work. The inspectors told the tenants that they had never seen conditions like those in the second bedroom; that it was not safe; and the tenants should seal it off and not use it. They also suggested that the tenant organize some

ventilation for the room to direct the toxins outside. The tenant installed a fan in the window to draw air from the second bedroom outside and poly'd off the door to the bedroom, sealing it as best as they could.

The fire inspection also inspected the house. He told the tenants that all of the hard-wired smoke detectors had been disconnected and gave the tenants a battery operated smoke detector for their unit.

Over a two week period in October the roof of the second bedroom slowly caved in. The landlord put a tarp over the area but when it rains water still pours into the room. Sometimes during heavy rains the water goes under the door and into the rental unit.

At the end of September the landlord did not pay the tenant for the work he had done. Instead he served the tenants with a 10 Day Notice to End Tenancy for Non-Payment of Rent on October 4, 2016.

The tenant testified that he has given the landlord detailed accounts for the work he has claimed.

At the beginning of November the hydro to the whole house was cut off. There is only one meter for the house and the account was in the landlord's name. BC Hydro told the tenants that the service had been disconnected because the landlord had not paid his account, despite repeated invoices from BC Hydro.

In order to restore service for their unit, including electric heat, the tenants put the hydro account in their own name. The tenants were required to pay a deposit of \$774.00 because of the historic usage at the address. As a result the tenants were not able to pay the November rent. Despite repeated requests the landlord has refused or neglected to pay the tenants anything for the hydro.

### Analysis

The tenant has established a claim of \$1032.39 for work requested by the landlord and for which the landlord promised to pay. This is comprised of 25.5 hours labour for the drainage and landscaping work; 11.5 hours labour on the deck demolition; 12 hours labour on the bedroom demolition; and \$52.39 for the lock replacement. By failing to pay the tenant for the work at the end of September, as he had promised, the landlord essentially agreed that payment could be deducted from the rent due.

This meant that the tenants were not required to pay anything to the landlord for October's rent as the amount due to the tenants was greater than the rent due. As a

result the 10 Day Notice to End Tenancy for Non-Payment of Rent is null and void because no rent was due. The Notice is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

At the beginning of November the tenants were still owed \$182.39 for the tenant's work.

The tenancy agreement obligates the landlord to provide hydro to the rental unit and the tenants to pay their share. The landlord did not comply with his obligation and the tenants were required to place the hydro account for themselves and for the landlord in their names at a very significant cost. I find that this was an emergency repair within section 33 of the *Residential Tenancy Act* and therefore an amount that the tenants were entitled to deduct from the November rent.

After the November rent of \$850.00 is applied to the amounts owed by the landlord to the tenants the tenants still have a credit of \$106.39 to be applied to the December rent.

The tenants also claim compensation for loss of use of the second bedroom. The photographs filed by the tenants of the condition of this room are shocking. Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement. After considering the size of the room relative to the size of the unit and the health hazard posed by the conditions in this room, I find that the value of this tenancy has been reduced by 20%, or \$170.00 per month, since the very start. I award the tenants the sum of \$1020.00 for the reduction in value of the tenancy for the period July 1, 2016 to December 31, 2016 inclusive. Pursuant to section 72(1) this amount may be deducted from rent due to the landlord until it is paid in full. For clarity, this is in addition to the \$106.39 credit that is to be applied to rent due to the landlord from the tenants.

I also award the tenants a rent reduction in the amount of \$170.00 per month starting January 1, 2017 and continuing every month thereafter until the tenancy ends, the parties agree that the room is safe and habitable, or an arbitrator orders that the deduction must end; whichever first occurs. In the event of a dispute either party may apply to the Residential Tenancy Branch for an order determining whether the deduction should continue or not.

Section 62(3) allows an arbitrator to make any order to give effect to the rights, obligations and prohibitions under the Act, including and order that a landlord or tenancy comply with the Act, the regulations or the tenancy agreement.

Pursuant to this section I order the landlord to transfer the BC Hydro account into his name. Until he does so, the tenants may deduct 75% of each hydro bill from the rent as it becomes due. The tenants must provide the landlord with a copy of each bill and a copy of the receipt showing that the bill has been paid in full before deducting anything from the rent.

The tenants also claimed for loss of quiet enjoyment. However, the hearing focused on the health and safety issues, the repair issues, and the notice to end tenancy so this claim was not properly canvassed in the hearing. I dismiss the claim for loss of quiet enjoyment with leave to the tenants to re-apply. I also make the same disposition, for the same reasons, for the tenants claim for compensation for charges incurred at Canada Post and loss of use of the back yard.

#### Conclusion

- a. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 4, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- b. An order reducing the rent has been made.
- c. An order requiring the landlord to put the hydro account has been. Provisions for compensation to the tenants until the landlord complies with this order have also been ordered.

*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: December 09, 2016

---

Residential Tenancy Branch