



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – DRI, CNL, CNR, MNDC, FF

For the landlords – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to dispute an additional rent increase; to cancel a 10 Day Notice to End Tenancy for unpaid rent; to cancel a Two Month Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the tenants advised that they wish to withdraw their application to cancel the Two Month Notice to End Tenancy for landlords use of the property as it is their intention to vacate the unit on December 31, 2016.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

- Has the landlord increased the rent and if so are the tenants entitled to dispute this increase?
- Are the tenants entitled to an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that the tenants moved into this rental unit in 2012 with the previous owner as their landlord. On May 01, 2015 the tenants entered into a new fixed term tenancy agreement with their previous landlord for a monthly rent of \$1,800.00. The tenants paid a security deposit of \$900.00 in April 2012. The agreement ended on April 30, 2016 and at that time the tenancy should end; however the previous landlord extended the tenancy to a month to month tenancy and the new owners purchased the property on May 26, 2016 and became the landlords to the tenants.

The landlords testified that from July 01, 2016 the tenants verbally agreed to pay rent of \$2,100.00. The landlords testified that they did not bully the tenants into paying this amount they simply told the tenants that they needed to pay more rent or they could move out as the landlords had family members who wanted to move in and pay the higher rent. The landlords had wanted \$2,500.00 but they all verbally agreed on \$2,100.00 and the landlords put in a wood stove to help with heating costs.

The landlord s testified that the tenants continued to pay \$2,100.00 from July to October, 2016. However in November the tenants only paid \$900.00. The tenant AL sent the landlords a text message saying the rent was only \$1,800.00 and they had paid \$900.00 and deducted the security deposit. The landlords then served the tenants with a 10 Day Notice for unpaid rent on November 04, 2016, and a second 10 Day Notice on November 05, 2016 as the landlord wanted to make sure they used the tenant's legal name on the Notice. The landlords testified

that the Notice has an effective date of November 14, 2016 and states the tenants owe rent due on November 01, 2016 of \$2,100.00. The landlord agreed that in fact the tenants owed \$1,200.00.

The landlords testified that no further rent has been paid for November or December, 2016. The landlords seek to amend their application to include unpaid rent for December, 2016. The landlords agreed they had served the tenants with a Two Month Notice to End Tenancy for landlords' use of the property on October 17, 2016 in person. That Notice has an effective date of December 31, 2016 and states that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member (mother, father or child) of the landlord or the landlord's spouse.

The landlords seek an Order of Possession effective immediately and a Monetary Order for \$3,300.00. The landlords also seek to recover their filing fee of \$100.00.

The tenants testified that the landlords had illegally increased the tenants' rent in July, 2016. The tenants had paid this increase of \$300.00 per month as they felt bullied into paying it and did not know their rights about rent increases at that time. The tenants testified that later they did some research and determined that the landlords could only increase the rent by a percentage amount and must give three months written notice to do so. If the landlords did not do this then the tenants could recover the overpayment by deducting it from their rent.

The tenants testified that in November, 2016 they paid \$900.00 and did at first ask the landlords to keep the security deposit because they did not trust the landlords to return it. After the tenants determined that they had in fact overpaid their rent by \$1,200.00 they used \$900.00 of this towards November's rent. The tenants testified that the landlords continue to hold \$300.00 in overpaid rent. Due to this the tenants testified that at the time the 10 Day Notice was served upon them there was no rent outstanding and therefore the Notice should have no force or effect and should be cancelled.

The tenants testified that with regard to the unpaid rent for December; under the Act the tenants are permitted to withhold their last month's rent in compensation for the Two Month Notice. Therefore the tenants testified that they do not owe rent for December.

The tenants therefore dispute the landlords' additional rent increase of \$300.00 per month as it was not the permitted increase under the *Act* and no written Notice of rent increase was given to the tenants. The tenants dispute the landlords' 10 Day Notice to End Tenancy and the tenants dispute the landlords' claim for a Monetary Order to recover unpaid rent.

The tenants seek a Monetary Order to recover the overpaid rent of \$300.00. As the tenants will be vacating the rental unit in accordance with the Two Month Notice the tenants do not have any further rent payments to deduct this amount from so seek to recover it from the landlords. The tenants also seek to recover their filing fee of \$100.00.

### Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows: With regard to the landlords' application for an Order of Possession for unpaid rent. I am satisfied from the evidence before me that the landlords failed to comply with s.42 and s. 43(1) of the *Act* regarding rent increases. The landlords did not provide proper written Notice of a rent increase and increased the rent above the allowable amount for 2016. Furthermore, the landlords did not get the tenants' agreement in writing to impose this rent increase.

Consequently, I find this was an illegal rent increase and therefore in accordance to s. 43(5) of the *Act* the tenants may deduct the increase from rent or otherwise recover the increase.

Therefore at the time the 10 Day Notice was issued and served upon the tenants there was no outstanding rent. The tenants had paid \$900.00 and are permitted under the *Act* to deduct the overpayment of rent from their monthly rent. I therefore find the rent for this unit remained at \$1,800.00 per month and the landlords received the full rent due for November. I therefore find that the 10 Day Notice is null in void and is hereby cancelled.

With regard to the landlords' claim to recover unpaid rent I find there is no outstanding rent for November, 2016 and this section of the landlords' application is dismissed. With regard to the landlords' request to amend their application for unpaid rent for December, 2016; I refer the parties to s. 51(1) and 51(1.1) of the *Act* which states:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

Consequently as the landlords had served a Two Month Notice under s. 49 of the *Act* the tenants are entitled to withhold their last month's rent or in this case rent for December, 2016. This section of the landlords' claim is therefore dismissed.

With regard to the tenants' application to dispute an additional rent increase. As detailed above I find the tenants have established a claim to dispute the additional rent increase and this section of their application is allowed. The tenants may therefore recover the overpayment of rent of \$1,200.00. As the tenants have applied \$900.00 of this overpayment to the rent for November, 2016 and as no rent is due for December, 2016 I find the tenants are entitled to recover **\$300.00** from the landlords pursuant to s. 43(5) of the *Act*. A Monetary Order has been issued to the tenants pursuant to s. 67 of the *Act*.

As the tenants' claim has merit I find the tenants are entitled to recover their filing fee of **\$100.00** from the landlords pursuant to s. 72(1) of the *Act*.

As the landlords application has no merit I find the landlords must bear the cost of filing their own application.

### Conclusion

The tenants' application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated November 04 and November 05, 2016 is cancelled and the tenancy will continue until legally ended.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$400.00**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The landlords' application is dismissed in its entirety 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: December 21, 2016

---

Residential Tenancy Branch