



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      OPR, MNR, MNSD, FF, CNR, OLC, ERP, RP, LAT, RR, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46
- a Monetary award for the cost of emergency repairs pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord SD (the "landlord") represented both co-landlords. The tenant CC (the "tenant") confirmed she represented both co-tenants in their application.

As both parties were in attendance I confirmed service of the landlord's 10 Day Notice, the parties' respective applications for dispute resolution and evidentiary materials. The parties

confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice, the landlord's application for dispute resolution, amendment and evidentiary materials. I find that the landlord was duly served with the tenants' application for dispute resolution and evidentiary materials.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award for the cost of emergency repairs, damages or loss under the *Act*? Should the landlord be ordered to make repairs to the rental unit? Should conditions be set on the landlord's right to enter the rental unit? Should the tenants be entitled to reduce the monthly rent for repairs, services or facilities not provided by the landlord? Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

The parties agreed on the following facts. Pursuant to a tenancy agreement signed by the parties, this tenancy began in April, 2017. The monthly rent is \$3,950.00 payable on the first of the month. A security deposit of \$1,975.00 and pet damage deposit of \$1,975.00 were paid by the tenants at the start of the tenancy and are still held by the landlord.

The tenant testified that the rental unit had numerous deficiencies. Among the issues were carpets that required cleaning, leaking pipes, and furnace duct work. The tenant also said that the keys to the rental unit needed to be changed as previous tenants and realtors have unreturned copies. The tenant said that she had requested the landlord perform the repairs on numerous occasions and the landlord failed to take action. The tenant testified that she put a stop order on the May rent cheque as a result of the landlord's failure to perform the requested cleaning and repairs. The tenant said that she has not paid rent for the subsequent months and no rent has been paid for May, June and July, 2017.

The landlord testified that the repairs requested by the tenants are not emergencies and unnecessary. The landlord submitted into written evidence a copy of the condition inspection report prepared at the start of the tenancy in support of the position that the rental unit had no major deficiencies. The tenant testified that the inspection was not performed properly and the report completed without the tenants' participation.

### Analysis

The parties agree that no rent has been paid for the months of May, June and July, 2017.

Section 46 (1) of the *Act* provides that, “a landlord may end a tenancy if rent is unpaid on any day after the day it is due.” However, section 46(3) states that “a notice under this section has no effect if the amount of rent that is unpaid an amount the tenant is permitted under this *Act* to deduct from the rent.”

The tenants argue that they were not under the obligation to pay the full amount of rent as the landlord failed to perform necessary emergency repairs and they were entitled to deduct the cost of the emergency repairs from the monthly rent.

Section 33 of the *Act* describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I find that based on the evidence of the parties the nature of the repairs performed by the tenants falls short of being emergency repairs. Carpet cleaning, furnace duct cleaning, and replacing plumbing parts are not emergency repairs within the meaning of the *Act*. While I accept that the tenants believed that the rental unit required maintenance and repairs, based on the photographs, invoices and repair orders submitted into written evidence by the tenants, I find that the nature of the repairs were not urgent, necessary for the preservation of the property or the health and safety of anyone so that they could be considered emergency repairs. Consequently, I find that the tenants had no basis in the *Act* to deduct or withhold any portion of the monthly rent.

The tenants seek compensation for loss in the value of the tenancy due to the deficiencies in the tenancy. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find there is insufficient evidence to find that the tenants are entitled to a rent reduction for this tenancy. I find the tenants' complaints about aspects of the rental unit to be minor, cosmetic, or subjective. I find there is insufficient evidence to show that the complaints made by the tenants have had a material effect on the tenants' ability to remain in the rental unit and use the facilities. Consequently, I dismiss the tenants' claim.

I accept the evidence of the parties that the monthly rent for this tenancy is \$3,950.00. I accept the parties' evidence that the tenant did not make any rent payment after being served with the landlord's 10 Day Notice, and the current rent arrears is \$11,850.00. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I find that there is insufficient evidence in support of the landlord's claim for monetary award for damages and losses other than the rental arrears. The landlord claims an amount of \$299.00 for unpaid utilities. However, the utility is a charge that the tenants are responsible for paying directly to the municipality. Pursuant to the addendum to the tenancy agreement the tenants are responsible for paying the utility bills directly and I find there is insufficient evidence to find this to be a loss suffered by the landlord. Consequently, I dismiss this portion of the landlord's claim with leave to reapply.

I find there is insufficient evidence in support of the landlord's claim for the cost of cleaning the furnace. I find there is insufficient evidence to show that the furnace cleaning arose as a result of the tenants' violation of the *Act*, regulations or tenancy agreement such that the loss can be claimed against the tenants. As a result, I dismiss this portion of the landlord's claim with leave to reapply.

I accept the evidence of the parties that the tenant has failed to pay the monthly rent for May, June and July, 2017. I accept the landlord's evidence that the total amount of arrears for this tenancy is \$11,850.00. I issue a monetary award for unpaid rent owing of \$11,850.00 as at July 10, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,975.00 security deposit and \$1,975.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

As this tenancy is ending I dismiss the balance of the tenant's application.

### Conclusion

The tenants' application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$8,000.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application, and to retain the tenants' security and pet damage deposit:

Item	Amount
Unpaid Rent May	\$3,950.00
Unpaid Rent June	\$3,950.00
Unpaid Rent July	\$3,950.00
Filing Fee	\$100.00
Less Security & Pet Deposit	-\$3,950.00
<b>Total Monetary Order</b>	<b>\$8,000.00</b>

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 10, 2017

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Residential Tenancy Branch