



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** OPB, FFL

**Tenant:** CNL, DRI, RP, RR, FFT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on the vacate clause in a fixed term tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants sought:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) 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's agent (the landlord), Tenant H.A. and the tenant's advocate attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. Tenant H.A. (the tenant) stated that he would be representing the interests of both tenants.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenants' Application for Dispute Resolution (the Tenants' Application) and the tenant acknowledged receipt of the Landlord's

Application for Dispute Resolution (the Landlord's Application). In accordance with section 89 of the *Act*, I find the landlord and the tenants were duly served with each other's Applications.

The landlord acknowledged receipt of the tenants' evidence which was left with an agent of the landlord on October 09, 2017. In accordance with section 88 of the *Act*, I find the landlord was duly served with the tenants' evidence.

The landlord confirmed that they did not submit any evidence.

At the outset of the hearing it was established that no Two Month Notice was issued to the tenants and that the Order of Possession being sought by the landlord is based on a fixed term tenancy agreement with a vacate date of October 31, 2017.

For this reason, I have amended the Tenant's Application to remove the tenant's request to cancel the Two Month Notice pursuant to section 62 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based a fixed term tenancy agreement?

Is the landlord entitled to recover the filing fee for their application from the tenants?

Are the tenants entitled to an order regarding their dispute of an additional rent increase by the landlord?

Are the tenants entitled to an order regarding repairs to the rental unit?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on March 01, 2003, with a current monthly rent of \$975.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$325.00.

In addition the tenant provided into evidence:

- a copy of a tenancy agreement dated July 09, 2014, with a monthly rent of \$825.00, indicating numerous improvements to the rental unit be done including painting, fixing the kitchen faucet, replacing the thermostat, laminate floor and other items which are illegible;
- A copy of a signed fixed term tenancy agreement beginning November 01, 2016, with a vacate date of October 31, 2017 with a monthly rent of \$975.00;
- A copy of a 'Reminder of Lease End Date' dated June 30, 2017, advising the tenant to inform the manager if they wish to renew the lease and that the new monthly rent will be \$1,025.00 after the installation of new kitchen and bath appliances;
- A copy of a letter from the landlord to the tenant dated September 11, 2017, stating that the landlord has not heard from the tenant regarding the new lease and notifying the tenant that they will have to vacate the rental unit as of October 31, 2017; and
- A copy of a letter from the landlord to the tenant dated September 27, 2017, confirming that the owner is executing his right to end the tenancy based on the initialled vacate clause in their fixed term tenancy agreement and offering a onetime payment to the tenant in the amount of \$1,000.00;

The tenant testified that the landlord promised to fix the kitchen with new appliances when the fixed term tenancy agreement commencing on November 01, 2016, was signed between the two parties. The tenant stated that they agreed to have the rent raised from \$825.00 to \$975.00 based on this promise by the landlord for upgrades to the kitchen. The tenant testified that they are seeking compensation in form of a rent reduction in the amount of \$1,800.00 ( $(\$975.00 - \$825.00 = \$150.00) \times 12 \text{ months}$ ) to reflect the difference in the monthly rent paid from November 01, 2016, to October 31, 2017, as a result of the landlord not providing new appliances as promised.

The landlord testified that the tenant signed a new fixed term tenancy agreement in November 2016 of their own volition and the landlord disputed the promise of new appliances based on that particular agreement.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle a portion of their dispute.

Both parties agreed to the following terms of a final and binding resolution of the tenant's application in relation to the vacate clause of the fixed term tenancy agreement and that they did so of their own free volition and without any element of coercion:

1. Both parties agreed that this tenancy will end on January 31, 2018, at which time the tenants will vacate the rental unit.
2. Both parties agreed that these particulars comprise the full settlement of all aspects of the Landlord's Application arising out of the fixed term tenancy agreement with a vacate clause of October 31, 2017.

As this tenancy is ending, I dismiss the Tenants' Application for repairs to be made, without leave to reapply.

Although the two parties were able to reach a settlement concerning the fixed term tenancy, they were not able to come to an agreement regarding the compensation requested by the tenant. As this tenancy is ending and there will be no opportunity for rent to be reduced in order for the tenants to recover the compensation they have requested, I will consider the tenant's request for compensation in the form of a monetary award.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed all documentary evidence, affirmed testimony and I find that there is no evidence to support that the landlord agreed to provide new kitchen and bath

appliances for the fixed term tenancy agreement that commenced on November 01, 2016. I do find that there was a promise of new kitchen and bath appliances in the 'Reminder of Lease End Date' dated June 30, 2017, associated with a new tenancy agreement to commence on November 01, 2017, with an increased monthly rent dependent on the promised upgrades, however; the tenant did not sign a new tenancy agreement with the landlord and therefore the landlord was not bound by any promise made.

For the above reason, the Tenants' Application for compensation for services or facilities agreed upon but not provided is dismissed, without leave to reapply.

### Conclusion

The Tenants' Application is dismissed, without leave to reapply.

In order to give effect to the settlement reached in regards to the Landlord's Application, I grant an Order of Possession to the landlord effective on **January 31, 2018, after service of this Order** on the tenant. Should the tenant(s) or any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 09, 2018

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Residential Tenancy Branch