



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, MNDCT, RP  
MNDCL, MNRL, OPRM-DR, FFL

### Introduction

This teleconference hearing was scheduled in response to cross applications under the *Residential Tenancy Act* (the “Act”). The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for damages or compensation, for an Order for emergency repairs, and for an Order for regular repairs.

The Landlord originally filed under the Direct Request process, but the application was crossed with the Tenants and therefore scheduled for a participatory hearing. The Landlord applied for an Order of Possession based on a 10 Day Notice, for a Monetary Order for unpaid rent, for a Monetary Order for damages or compensation and for the recovery of the filing fee paid for this application.

The Landlord and both Tenants were present for the duration of the teleconference hearing. All parties confirmed that the Notice of Dispute Resolution Proceeding packages and copies of each party’s evidence was exchanged as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

### Preliminary and Procedural Matters

The name of the Landlord was spelled differently on both applications. In accordance with Section 64(3)(c) of the *Residential Tenancy Act*, the Tenants' application was amended to spell the name of the Landlord as stated on the Landlord's application.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims must be related to each other and unrelated claims may be dismissed. Due to the time constraints in the hearing, the Tenants' application for monetary compensation and for an Order for regular repairs was dismissed with leave to reapply. The claim for an Order for emergency repairs was heard due to the potential urgent matter.

Both parties were informed during the hearing that the only claims that would be heard were the Tenants' application to cancel the 10 Day Notice and an Order for emergency repairs, as well as the Landlord's claims for an Order of Possession and for a Monetary Order for unpaid rent and/or utilities. Whether the Landlord is entitled to the recovery of the filing fee paid for their application will also be considered.

#### Issues to be Decided

Should the 10 Day Notice be cancelled?

If the 10 Day Notice is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is an Order needed for emergency repairs to be completed?

Should the Landlord be awarded the recovery of the filing fee paid for this Application for Dispute Resolution?

#### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on April 16, 2018. Monthly rent in the amount of \$1,700.00 is due on the first day of each month. A security deposit in the amount of \$850.00 was paid at the outset of the tenancy.

The Landlord provided testimony that rent for May 1, 2018 was \$200.00 short. However, he did receive a text message from the Tenants that they repaired a leaky outdoor

faucet and the Landlord responded telling them that they could take \$50.00 off of the rent as compensation. As such, the Landlord stated that \$150.00 for May rent remains unpaid.

The Tenants testified that they offered to pay the additional \$200.00 in the form of a prepaid Visa card which the Landlord declined. The text message exchange was submitted into evidence in which the Landlord stated that he would not be able to deposit a pre-paid credit card into his account and could not accept this as payment.

The Tenants also stated that they spent 5 hours fixing the faucet outside and therefore \$50.00 did not cover the cost of the repairs.

The Landlord testified that when rent was unpaid in June 2018, a 10 Day Notice dated June 2, 2018 was served to the Tenants by posting in on their door on the same day. The Tenants testified that they received the 10 Day Notice on June 2 or June 3, 2018.

The Landlord testified that rent was also not paid in July 2018 and that a BC Hydro bill in the amount of \$221.22 has not been paid by the Tenants. The Tenants testified that it was their understanding that they were not responsible for paying electricity and that they thought it was included in the rent.

The Tenants submitted many photos and videos of repairs that are needed or that they have done in the home. They also testified that they had the hot water tank replaced in the home at a cost of \$896.00, along with \$141.75 for additional repairs by a plumber. During the hearing, the Landlord agreed to cover these costs for a total of \$1,037.75.

The Tenants were in agreement that they have not paid rent for June and July 2018 and testified that they are withholding rent due to the amount of repairs they have done. They testified that the repairs they have done total over \$5,000.00. The Tenants testified that the hot water tank was an emergency due to water leaking out of it and that they contacted the Landlord by phone to fix it. When they didn't hear back, they had it replaced themselves.

The Landlord testified that the Tenants did not contact him by phone and instead when they advised him by text that the hot water was running out quickly, he asked the Tenants for times when a plumber could come by to have a look at the tank. The Landlord testified that the hot water tank was not presented as an emergency to him and that he never heard back from the Tenants about a time for a plumber to come by.

The Tenants also testified that most of the other repairs they have done in the home have been an emergency. They also stated that black mould in the home is a current concern for their health.

The Landlord testified that when the Tenants mentioned black mould in a text message to him, he attempted to arrange a professional to come and look at potential mould issues in the unit, but never heard back from the Tenants. The Landlord submitted text message exchanges with the Tenants into evidence. He also testified that he was not aware of the Tenants complaints about many of the repairs needed in the rental unit until receiving information from the Tenants for this hearing.

### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 26(1) of the *Act* which states the following:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the Tenants were claiming that rent was unpaid due to emergency repairs that were needed, I look to Section 33 of the *Act* which speaks to emergency repairs. This section states that emergency repairs are repairs that are urgent and necessary for health and safety and/or to protect the property.

To comply with Section 33(3) of the *Act*, a tenant who finds that emergency repairs are needed must make two attempts to notify the landlord by phone and provide reasonable time for the repairs to be completed. Only after that has taken place can a tenant go ahead with conducting the emergency repairs themselves.

Based on the evidence submitted and the testimony of both parties, I find insufficient evidence to determine that emergency repairs were needed, or that the proper process for notifying the Landlord about the need for an emergency repair was followed.

The Landlord submitted text messages in which he was notified that the hot water was running out quickly and asked the Tenants about setting up a time to have a plumber

come in. From the evidence I saw, the issue with the hot water tank was not presented as an emergency.

I find that all of the other repairs mentioned by the Tenants during the hearing, as well as through their photos and videos submitted in evidence were regular repairs, not emergency repairs. This is due to the fact that the repairs were not urgent in nature and did not cause immediate risk to the health and safety of the Tenants or risk to the Landlord's property. As such, I find that the Tenants did not have the right under the *Act* to deduct any amount from their rent for repairs.

I also note that a landlord cannot refuse to accept rent, however, I do not find the payment of rent in the form of a prepaid credit card to be a reasonable method of providing rent. Therefore, I find that the Landlord did not refuse to accept rent in May 2018 and find that the Tenants owe \$200 for May 2018, \$1,700.00 for June 2018 and \$1,700.00 for July 2018.

I also accept the Landlord's testimony that he was willing to deduct \$50.00 from rent for May 2018 due to the Tenants replacing an outside faucet. Due to insufficient evidence from the Tenants to determine that the repair should be valued at more than \$50.00, I decline to award more. Therefore, I find that the outstanding rent for May 2018 is \$150.00.

As I find that an amount of rent was owing at the time the 10 Day Notice was issued on June 2, 2018, I find that the 10 Day Notice was issued in accordance with Section 46(1) of the *Act*.

In review of the 10 Day Notice dated June 2, 2018, I also note that pursuant to Section 46(4), a tenant has 5 days within which to pay the outstanding rent or file to dispute the notice. As the Tenants testified that they received the 10 Day Notice on June 2 or June 3, 2018 and filed an Application to dispute the notice on June 11, 2018, I find that they did not apply within the time allowable.

When a tenant does not pay the outstanding rent or apply to dispute the 10 Day Notice within 5 days, they are conclusively presumed to have accepted that the tenancy has ended, pursuant to Section 46(5) of the *Act*. Regardless of whether the Tenants applied to dispute the 10 Day Notice in time, I still find the notice to be valid due to the outstanding rent that remains unpaid. As such, I dismiss the Tenants' application to cancel the 10 Day Notice.

In review of the 10 Day Notice, I find that it is in compliance with Section 52 of the *Act*, and therefore, pursuant to Section 55(1) of the *Act*, a two day Order of Possession will be granted to the Landlord.

As for the outstanding utility bill from BC Hydro, I accept the evidence of the Landlord of text messages exchanges with the Tenants in which he informs them multiple times of the need to register an account with BC Hydro. I also look to the tenancy agreement which does not state that electricity is included in the rent.

The Landlord submitted the BC Hydro bill into evidence which is for the period of April 11, 2018 to June 8, 2018. As the Tenants did not move into the rental unit until April 16, 2018, the Landlord testified that the Tenants are responsible for a pro-rated amount of the bill in the amount of \$190.00 instead of the full \$221.22 as stated on the bill.

As the Landlord was successful in their application, he is awarded the recovery of the filing fee paid for this application in the amount of \$100.00 pursuant to Section 72 of the *Act*.

A Monetary Order will be granted to the Landlord in the amount outlined below. The Landlord is allowed to retain the security deposit of \$850.00 towards the total amount owed, in accordance with 38(4)(b) of the *Act*.

#### *Monetary Order Calculations*

May 2018 outstanding rent	\$150.00
June 2018 rent	\$1,700.00
July 2018 rent	\$1,700.00
BC Hydro bill	\$190.00
Recovery of filing fee	\$100.00
Less cost of hot water tank	(\$896.00)
Less plumbing costs	(\$141.75)
Less Security deposit	(\$850.00)
<b>Total owing to Landlord</b>	<b>\$1,952.25</b>

#### Conclusion

The Tenants' claims for a Monetary Order for damages or compensation and for an Order for regular repairs are dismissed with leave to reapply.

The Tenants' claim for an Order for emergency repairs is also dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,952.25** for rent owed for May, June and July 2018, for outstanding utilities and for the recovery of the filing fee paid for this application. The Landlord is provided with this Order in the above terms and 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 31, 2018

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Residential Tenancy Branch