



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, ERP, LRE

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 15, 2018 ("first 10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to perform emergency repairs to the rental unit, pursuant to section 33; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

"Tenant KZ" not attend this hearing, which lasted approximately 90 minutes. Tenant YG ("tenant"), the tenants' advocate and the landlord's two agents, "landlord PH" and landlord MB ("landlord"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that he was the building manager and landlord PH said that he was the owner of the rental unit. Landlord PH confirmed that the landlord had permission to represent him at this hearing. The tenant confirmed that he had permission to represent tenant KZ (collectively "tenants") and the tenants' advocate had permission to represent both tenants at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and notice of hearing.

The tenant testified that he served the landlord with a copy of the tenants' digital evidence package on a USB drive on January 12, 2019, by way of leaving it under the landlord's door. The landlord and landlord PH both said that they did not receive the tenants' digital evidence. I notified both parties that because the tenant did not use an approved service method as per section 88 of the *Act*, the landlord did not receive the evidence, and the evidence would be deemed received late by the landlord, less than 14 days prior to the hearing as per Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*, I could not consider it at the hearing or in my decision.

The landlord said that he served the tenant with a copy of the landlord's written evidence package on January 13, 2019, by way of registered mail to the rental unit address. The landlord provided a Canada Post tracking number verbally during the hearing. He said that the tenants had not picked up the evidence package. The tenant said that he did not receive the evidence or a notice to pick up the mail. I notified both parties that the landlord's evidence was deemed received late by the tenants, less than 7 days prior to the hearing as per Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*, on January 18, 2019, five days after the mailing, as per section 90 of the *Act*. I informed both parties that since the evidence was late and the tenants did not receive it, I could not consider it at the hearing or in my decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the tenants' claim to dispute the landlord's 10 Day Notice, dated January 4, 2019 ("second 10 Day Notice"). The tenant requested this amendment during the hearing and provided a copy of this notice. He said that he did not know he had to file an amendment form in order to amend the tenants' application. The landlord was aware of the second 10 Day Notice and made submissions about it during the hearing. I find no prejudice to either party in making this amendment.

The tenant confirmed receipt of the landlord's first 10 Day Notice on December 20, 2018 and the second 10 Day Notice on January 4, 2019. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's first and second 10 Day Notices on December 20, 2018 and January 4, 2019, respectively.

### Issues to be Decided

Should the landlord's two 10 Day Notices be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to perform emergency repairs to the rental unit?

Are the tenants entitled to an order restricting the landlord's right to enter the rental unit?

### Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord issued the first 10 Day Notice for unpaid rent of \$1,665.00 due on December 1, 2018 and the second 10 Day Notice for unpaid rent of \$1,600.00 due on January 1, 2019. The landlord testified that the tenants failed to pay rent for December 2018 and January 2019 in the amount of \$1,600.00 for each month. The landlord stated that the tenant's cheque in the amount of \$1,625.00 for rent and the \$25.00 late fee for December 2018, given to the landlord on December 2, 2018, was returned for insufficient funds on December 5, 2018, so the first 10 Day Notice was posted by the landlord to the tenants' door on December 15, 2018.

The tenant stated that he is aware his December 2018 rent cheque given to the landlord, was returned for insufficient funds. He said that his roommate, tenant KZ, did not transfer the rent money. He said that he received the first 10 Day Notice on December 20, 2018, but he received a copy of a bank scanned document on December 15, 2018, with the returned cheque information and a handwritten note from the landlord indicating that the tenants owed \$1,665.00 for rent and late fees for December 2018. The tenant claimed that he paid rent of \$3,265.00 in cash to the landlord personally on December 15, 2018, which included rent and late fees of \$1,665.00 for December 2018 and rent of \$1,600.00 for January 2019. He said that tenant KZ and another friend witnessed this payment but they were unable to attend this hearing to testify and they

did not speak English. The tenant said that he received rent receipts from the landlord for the above payments. The landlord denied receiving any cash from the tenants or providing any rent receipts to the tenants for December 2018 or January 2019 rent.

The tenant stated that he received the second 10 Day Notice for rent of \$1,600.00 due for January 2019 but he did not do anything, including filing an application or amending this application, because he had already prepaid the rent and he was waiting for this hearing to happen.

The tenants seek repairs to their leaking kitchen faucet and for the electricity to be turned back on in their rental unit. The tenants also seek a monetary order for \$5,000.00. They seek the return of their security deposit totalling \$600.00, but they indicated \$2,078.20 in their application. They also seek \$212.80 to replace tenant KZ's cellular phone, \$2,579.00 to replace the tenant's laptop, and \$130.00 to clean the carpet at the rental unit.

### Analysis

I find that the tenants failed to pay the full rent due on December 1, 2018 and January 1, 2019, within five days of receiving the first and second 10 Day Notices. The tenants made an application on December 24, 2018, pursuant to section 46(4) of the *Act* within five days of receiving the first 10 Day Notice on December 20, 2018. However, I find that the tenants failed to provide sufficient proof that they paid the December 2018 and January 2019 rent after their original December rent cheque was returned for insufficient funds. The tenants did not provide bank statements to show that they withdrew cash of \$3,265.00 to pay the landlord. Tenant KZ or the tenant's friend did not appear at this hearing to testify that they witnessed the tenant personally paying the landlord \$3,265.00 for rent in cash. The landlord denied receipt of the cash and denied issuing any rent receipts to the tenants.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on December 30, 2018, the corrected effective date on the first 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 30, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I dismiss the tenants' monetary claim for the return of their security deposit, with leave to reapply. The tenants did not pay \$2,078.20 to the landlord for the security deposit,

the tenant said he paid \$400.00 and tenant KZ paid \$200.00, while the landlord said he received \$800.00 total from both tenants and another roommate. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the Act.

I dismiss the tenants' monetary claim for \$212.80 to replace tenant KZ's cellular phone and \$2,579.00 to replace the tenant's laptop, without leave to reapply. I find that the tenants knowingly plugged their laptop and cellular phone overnight into the kitchen electrical outlet on December 7, 2018, knowing that the kitchen faucet had been leaking since September 2018 and there would be water in the area, regardless of the amount of water. The tenants even claimed for this leaky faucet to be repaired at this hearing, indicating that the landlord failed to do so from September 2018 to present in January 2019. The damage to their cellular phone and laptop is due to their own negligence. I accept landlord PH's evidence that he was not notified of any leaky kitchen faucet until mid-December 2018, after the tenants claim their electronics were destroyed.

I dismiss the tenants' monetary claim for \$130.00 to clean the carpet at the rental unit, without leave to reapply. The tenant claimed that he rented a machine at the end of December 2018, to clean the carpet because it had been dirty since the beginning of this tenancy when the tenants moved in the unit in September 2018. The landlord claimed that if the unit was not clean it should have been raised by the tenants to the landlord at the beginning of this tenancy, particularly since the unit was brand new. He stated that it was not a priority to the tenants if they waited months before cleaning the carpet. I find that the tenants were entitled to raise any issues with the carpet at the move-in condition inspection with the landlord but they failed to do so when they moved in until they decided to clean the carpet, nearly three months after moving in.

I order the landlord to inspect and repair, if necessary, the leaking kitchen faucet at the rental unit, provided that the tenants give the landlord access to the rental unit. Both parties agreed to this during the hearing.

Since the tenancy is ending, I dismiss the tenants' application for any other emergency repairs and restricting the landlord's right to enter the rental unit. I accept the landlord's evidence that the electricity was shut off in the rental unit because the tenants cancelled the service and failed to pay the bill. Electricity is not part of the tenants' rent at the rental unit so it is the responsibility of the tenants.

### Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) 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 order the landlord to inspect and repair, if necessary, the leaking kitchen faucet at the rental unit, provided that the tenants give the landlord access to the rental unit.

The tenants' monetary claim for the return of their security deposit is dismissed with leave to reapply. The security deposit is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The remainder of the tenants' application is dismissed 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: January 23, 2019

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Residential Tenancy Branch