



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR FFL CNC CNR LAT LRE MNRT MT OLC PSF RP RR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (‘the 10 Day Notice’) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66, and
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- 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 change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for emergency repairs, money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67

Both parties appeared, and with their consent, both applications were dealt with today. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

**Preliminary Issue—Tenants' Application for an Extension of Time to File their Application for Dispute Resolution**

The tenants filed her application for dispute on October 31, 2019 although the landlord had served them with both a 10 Day Notice for Unpaid Rent and a 1 Month Notice for Cause on September 4, 2019. The 1 Month Notice was posted on the tenants' door. The tenants have the right to dispute the 10 Day Notice within 5 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*. The tenants have the right to dispute the 1 Month Notice within 10 days of receiving it, unless the arbitrator extends that time limit according to section 55 of the *Act*.

Section 66 (1) of the *Act* reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

Normally if the tenant does not file an Application within the time period required by the *Act*, they are presumed to have accepted the Notice, and must vacate the rental unit. The landlord testified that the 1 Month Notice was posted on the tenants' door on September 4, 2019. In accordance with sections 88 and 90 of the *Act*, the 1 Month Notice is therefore deemed to have been received on September 7, 2019, 3 days after posting. The tenants filed for dispute resolution on October 31, 2019, 54 days later.

Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenants testified in the hearing that they were unaware

of the time limits for applications to cancel a notice to end tenancy, and that they had to prepare the and gather their evidence before attending the center where they applied. The tenants testified that they had to attend the center in order to obtain assistance with filing their application.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as *“the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure”*.

On the basis of section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants have not met the burden of proof to justify that there is an exceptional reason for the late filing of her application. Although I accept the tenants’ testimony that they were not aware of their obligations to file within a period of time, and that they needed time to prepare their application and evidence, I find that they did not provide any exceptional or compelling reasons for why they had waited such an extensive period of time before obtain assistance. I find that the 10 Day Notice and the 1 Month Notice clearly stated under the heading “Information for Tenants” that they have the right to dispute the Notices, and that failure to do so means that it is presumed that the tenants have accepted that the tenancy is ending, and that they must move out by the effective date of the notices.

Accordingly, I find the tenants’ reasons for their late application do not meet the definition of “exceptional” as per RTB Guideline #36, and under these circumstances, I am not allowing the tenants’ application for more time to make their application to cancel the Notices to End Tenancy.

**Issue(s) to be Decided**

Should the landlord’s 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent?

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover his filing fee for this application pursuant to section 72 of the *Act*?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Are the tenants entitled to an order for the landlord to comply with the *Act*?

Are the tenants entitled to an order to allow the tenants to change the locks to the rental units?

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

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2019, with monthly rent currently set at \$820.00, payable on the first of every month. The landlord did not collect a security deposit for this tenancy.

The landlord issued the tenants a 1 Month Notice for Cause for repeatedly paying their rent late on September 4, 2019. The landlord testified that the tenants have been late on at least 3 occasions, and 10 Day Notices for Unpaid rent were issued on July 3, 2019, August 2, 2019, and on September 4, 2019.

The tenants testified that the landlord had given them permission to reduce their rent for repairs. The tenants testified that extensive repairs were required, and they undertook these repairs and paid for them themselves. The tenants submitted a monetary claim for reimbursement of these repairs, as well as for a reduction in rent for the landlord's

failure to undertake these repairs, which the tenants testified include issues with the plumbing. The tenants submitted a monetary claim of \$200.00 for emergency repairs, and a \$1,400.00 rent reduction. The tenants also supplied the following monetary worksheet as part of their claim

Item	Amount
Fix/insulate windows/materials	\$150.00
Adjust/insulate doors/materials	100.00
Rehang/insulate attic hatch	75.00
Paint house due to interior mould/materials	300.00
Re-do bathtub due to mould	100.00
<b>Total Monetary Order Requested</b>	<b>\$725.00</b>

The tenants submitted in evidence a description of the repairs the landlord has not performed including issues with mould, cold air leaking in due to shifting of the home, flickering lights, dampness, problems with the toilet, and issues with the door locks. The tenants also submitted text messages sent to the landlord, as well as photos in support of their claim. The tenants testified that they never submitted a claim for reimbursement as they had permission from the landlord to reduce rent for the repairs.

The landlord testified that he had not received any formal written requests for repairs before the tenants had filed their application.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 1 Month Notice, October 31, 2019.

In this case, this required the tenants and anyone on the premises to vacate the premises by October 31, 2019. 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*.

As the landlord was successful with their application, I allow the landlord to recover the filing fee for this application.

As the tenancy has ended, I dismiss the tenants' application for orders that relate to this tenancy, with the exception of the monetary portions of their claim.

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 or 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

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system...
  - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, issues with the plumbing and heating may be considered emergency repairs. Sections 33(5)(b) and 33(6)(b) require the tenants to provide a written account of the emergency repairs accompanied by a receipt for the amount claimed.

I have considered the sworn testimony of both parties as well as the documentation provided for this hearing. Although the tenants referenced an agreement of the landlord to reimburse them for the repairs, I find that the tenants did not provide sufficient evidence to support the existence of this agreement. Furthermore I accept the landlord's

testimony that he was never formally provided with any detailed receipts for the repairs until the tenants filed for dispute resolution. On this basis, I find that the tenants did not provide sufficient evidence to support their claim under section 33(1) for Emergency Repairs, and I dismiss this portion of the tenants' claim without leave to reapply.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law,...*

Based on the testimony in the hearing and evidence submitted for this hearing, I am satisfied that the landlord has failed to maintain the rental unit in a state of decoration and repair that complies with health and safety standards as required by law. Although the tenants' application did not meet the requirements for a claim under emergency repairs for their claim as set out in their application and monetary worksheet, I am satisfied that the landlord has failed in their obligation to maintain the rental unit, and as a result, the tenants suffered a reduction in the value of their tenancy. I allow the tenants a rent reduction equivalent to ten percent of their monthly rent, in the amount of \$82.00 per month for this tenancy from March 1, 2019 through to November 30, 2019 for a total monetary order of \$738.00.

## **Conclusion**

I issue a Monetary Order in the amount of \$638.00 in the tenants' favour as set out in the table below:

<b>Item</b>	<b>Amount</b>
10% rent reduction for March 1, 2019 – November 30, 2019	\$738.00
Reimbursement of Filing Fee to Landlord	-100.00



<b>Total Monetary Order to Tenants</b>	<b>\$638.00</b>
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The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

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.

The remaining portions 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: December 3, 2019

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Residential Tenancy Branch