



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC MNDCT MNRT OLC RR

### **Introduction**

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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 money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and 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.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenants confirmed receipt of the 1 Month Notice on October 31, 2019, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

### **Issues to be Decided**

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

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

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

Are the tenants entitled to the monetary orders requested?

### **Background and Evidence**

This month-to-month tenancy began on January 15, 2019, with monthly rent currently set at \$1,500.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$750.00, which the landlord still holds.

The landlord issued the 1 Month Notice on the following grounds:

- 1) The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
  
- 2) That the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

The landlord is seeking an end of this tenancy for the following reasons. The landlord testified that the tenants smoke on the property despite the fact that it was made clear to the tenants that this is a non-smoking home. The landlord testified that the smoking involves both cigarette and marijuana smoke, and the tenants smoke inside the house. The landlord testified that there are burn marks caused by the tenants extinguishing their cigarettes on the outside of the cedar home. The landlord also testified that the tenants would cause significant disturbance to others by playing loud music, and yelling and arguing.

The landlord also described an incident that took place on or about October 20, 2019 when the tenants had cut extension cords and cords to the propane tank in an outdoor area that was designated for smoking. The landlord confirmed that no charges had

been laid in relation to the incident, but that the tenants had caused damage as well as cause potential risk to others and the home because of the propane tank.

The tenants confirmed in the hearing that on October 18, 2019 an incident took place when they had noticed a fire outside. The tenants testified that they had taken action when they noticed the light bulbs were exploding, and the tarp melting. The tenants testified that they had cut the power line and moved the heater as the it was so hot, they were concerned about a possible explosion.

The tenants dispute the landlord's claims about the smoking inside the home.

The tenants also made an application for the landlord to comply with the *Act*, for a rent reduction in the amount of \$1,000.00, \$1,000.00 for repairs performed by the tenants to the home, and the following monetary orders:

<b>Item</b>	<b>Amount</b>
Kitchen Faucet	\$135.00
Bathroom Faucet	35.00
Heater	250.00
Washer	423.00
Dryer	250.00
Paint	45.00
Caulking	14.40
Weather stripping	20.00
Postage	13.25
Land Title Search	9.75
<b>Total Monetary Order Requested</b>	<b>\$1,195.40</b>

I note a discrepancy where although the tenants' monetary worksheet indicates a total of \$1,664.40, the sum of the items listed on their monetary worksheet is \$1,195.40. As the respondent has the right to know what the other party is seeking, only the items listed in the tenants' monetary worksheet was considered.

The tenants provided a list of reasons for the monetary orders requested in their evidence, which I have included below (names replaced with initials):

*480 square feet for \$1500 per month, illegal sublet AF not the homeowner*

*suite not cleaned, wall damage throughout*

*previous tenant still living in suite for a week after move in eventually moved upstairs to A's suite*

*no heat tenants purchased \$250 heater, can only run one electric heater as not enough power in suite for more, breaker resets constantly, forced air central heat only comes on once a day at 5am, rental suite has ceramic tile on concrete throughout creating constant cold*

*no separate secure mailbox, next door neighbour seen checking our mailbox*

*no front door light*

*tenant purchased and installed new locks (no keys for previous locks from A)*

*tenant purchased and installed kitchen faucet, bath faucet (both leaked)*

*previous tenants car in parking spot for more than a month*

*tenant purchased and installed new blinds*

*hot water tank is at highest setting and burns flesh*

*lack of quiet enjoyment: thumping, screaming fits, running, jumping, adults yelling at child, suite ceilings are only 6foot 3inch no sound deadening between suites, backyard parties till 3am, constant permitted construction in shared yard*

*AF and friend (name unknown) at tenant door uttered threats to tenant 8:55pm Friday October 11 2019 (video)*

*AF threatens tenant October 11 2019 9:02pm via text to falsely report to government?(see text message)*

*Three structures built in shared back yard without permits, hastily constructed gas fireplace, illegal electrical, fridge, bar area,smoking, under plastic tarp with windows and door installed (pics)*

*structures have been condemned by saanich bylaw and yet still remain*

*fridge leaks water*

*fridge freezer creates 1 inch ice arena on bottom*

*no smoke or gas detector in suite (gas hot water heater and gas central heat in suite)*

*mouse infestation (pics)*

*rat infestation(pics)*

*ant infestation (pics)*

*tenant caulked all baseboards throughout suite to stop ant infestation (pics)*

*refuses to produce rent receipt*

*tenant filled and sanded holes in walls*

*tenant sand/paint LR*

*tenant sand/paint bath*

*garbage bin always full*

*front door weather stripping installed by tenant (pics)*

*2 of 4 windows dont seal or lock , fixed by tenant*

*cigarette smoke wafting into windows and door from front porch, side yard, back yard*

The tenants testified that they are still suffering from a rat infestation in the home.

The landlord testified that he was unaware of the issues in the home with the exception of one hole that required repairs. The landlord testified that the rats entered the home as the tenants would leave the doors open.

The landlord testified that there was no problem with the heating system in the home, and that the tenants would leave the windows and door open. The landlord also testified that the tenants were aware that the home did not have a washer and dryer upon move-in, and had purchased a set without his permission. The tenants dispute that they leave the doors and windows open all day. The tenants testified that the garbage containers would be full, and the tenants had to pay for the disposal of the extra garbage.

The landlord testified that the home was last painted in 2017, and did not require any painting or caulking. The tenants testified that they had to caulk due to ants entering the home. The tenants also expressed concern about the lack of insulation in the home.

### **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. The tenants filed their application on October 31, 2019 after receiving the 1 Month Notice. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

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

I have considered the concerns brought up by the landlord, as well as the testimony of the tenants. The burden is on the landlord to demonstrate how the tenants have engaged in illegal activity that is likely to cause damage to the landlord's property, and how the tenants have significantly put the landlord's property at risk to the extent that this tenancy must end on that basis.

While the landlord alleges that the tenants have engaged in illegal activity, I find that the evidence provided by the landlord does not sufficiently support that the tenants have engaged in any illegal activity. The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the

arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. The landlord gave insufficient evidence of illegal activity at all. On this basis, I am not allowing the landlord's application for an Order of Possession on the grounds of illegal activity.

The landlord also described an incident that had taken place in October of 2019 which involved damage of the landlord's belongings. I find that the tenants did not dispute that this incident took place, and provided a credible explanation for the events that had taken place.

In relation to the landlord's allegations that the tenants smoke inside the home, and caused damage to the exterior of the home, I find that the tenants have disputed these claims. In light of the disputed testimony, I find the landlord has failed to provide sufficient evidence to support their claims.

For the reasons outlined above, I find that the landlord has failed to provide sufficient evidence to support that this tenancy should end on the grounds provided on the 1 Month Notice. Accordingly, I allow the tenants' application to cancel the 1 Month Notice dated October 31, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

Section 67 of the *Act* establishes that an Arbitrator may determine and issue an order for damages and loss arising from a party breaching the Act, regulations or 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. A claimant also has the duty to act reasonably to mitigate their losses.

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.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

**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, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The tenants submitted a list of items that the landlord had failed to address, which the tenants had addressed themselves. The landlord disputes these claims, stating that the heating system was in working order, and that the tenants had never made any formal written requests about the items listed.

Other than the heating system, I am not satisfied that the repairs fall under the definition of emergency repairs under section 33 of the *Act*. Although the heating system falls under section 33 of the *Act*, I am not satisfied that the evidence presented supports that the repairs were considered urgent, a requirement of section 33 (1)(a) of the *Act*. I find that the tenants had undertaken the purchases and repairs without the landlord's knowledge or permission, nor did they have an order allowing them to do so.

I have considered the testimony of both parties, and I am not satisfied that the tenants have provided sufficient evidence to support that the landlord has failed to fulfill their obligations as required by section 32 and 33 of the *Act* as stated above.

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."

Although I find that the tenants' expectations of this tenancy have not been met, I find there is insufficient evidence for me to make a finding that the landlord had failed to

meet their obligations under the *Act*. I am therefore dismissing the tenants' entire monetary claim for losses or money owed and application for a rent reduction without leave to reapply.

Section 72 of the *Act* only allows for recovery of the filing fee, and not the reimbursement of other costs associated with the filing of or preparing an application such as mailing or title searches. Accordingly, these portions of the tenants' application are dismissed without leave to reapply.

**Conclusion**

The tenants' application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated October 31, 2019 is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I dismiss the remainder of the tenants' application 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 31, 2019

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Residential Tenancy Branch