



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

For the tenants – CNR, MNDC, OLC, ERP, RP, PSF, RR, FF

For the landlords – OPR, MND, MNR, MNSD, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants/tenants have put on their application as most of them are unrelated to the main issues which are to cancel the Notice to End Tenancy, compensation for money owed or for damage or loss under the Act and to allow the tenants to reduce their rent for services or facilities agreed upon but not provided.

I therefore will deal with these sections of the tenant's application and dismiss the remaining unrelated disputes because the tenant has stated that she is moving out of the rental property on December 15, 2009.

Both parties served the other party in person, with a witness, with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:



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## Issues(s) to be Decided

- Should the Notice to End Tenancy for unpaid rent be cancelled?
- Are the tenants entitled to compensation for damage or loss under the *Act* and if so how much?
- Are the tenants entitled to reduce their rent for services agreed upon but not provided?
- Are there arrears of rent and if so, how much?
- Whether the landlords are entitled to an Order of Possession?
- Have the landlords established a monetary claim due to damage to the rental unit?
- Are the landlords entitled to keep all or part of the security deposit and interest?
- Whether the landlords are entitled to a Monetary Order to recover the unpaid rent and filing fee?

## Background and Evidence

This tenancy started on October 01, 2008. Rent for this property is \$1,100.00 per month and is due on or before the 1<sup>st</sup> of the month. This is a year to year tenancy with the tenancy continuing until the landlord or tenant gives proper notice to terminate the tenancy. The tenants paid a security deposit of \$550.00 on September 19, 2009. The landlords did not complete a move in condition inspection in accordance with the Residential Tenancy Act section 23.

The tenants have applied to cancel the Notice to End Tenancy for Unpaid Rent. The landlords served them with a notice which was not on an approved form and was not dated or signed. The landlords served the tenants with another 10 Day Notice on November 17, 2009. This Notice stated that the unpaid rent is \$1,810.00. This notice was posted on the tenant's door. The tenants state that they are moving from the property on or before December 15, 2009.

The tenants claim that their tenancy agreement states that heat and water are included in the rent. However, they have been paying the Hydro bills for the property which would include the heat as the property has electric heating. The tenants have provided a copy of the hydro bills

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which show that they paid \$766.04 for hydro for October and December, 2008 and \$1,846.45 for February, March, April and May, 2009. They paid \$720.00 by October 27, 2009 and there is an outstanding Hydro bill for \$424.20 which has not yet been paid. The tenants testify that they have baseboard electric heating. They request the return of the Hydro they have paid to an amount of \$3,746.69 from the landlords.

The landlord's testify that the tenants were served with a 10 Day Notice to End Tenancy as there were rent arrears. In August 2009 the tenants owed \$610.00. They owed \$100.00 for October, 2009 and did not pay any rent for November and December, 2009. The total amount of outstanding rent is \$2,910.00. The landlords seek a Monetary Order to recover this amount and to keep the security deposit and any accrued interest in partial payment of this amount. The landlords also seek an Order of Possession based on the unpaid rent.

The landlords claim the tenant's children have damaged the wooden garden fence. They have included a letter from a neighbour detailing that the fence which belongs to the neighbours was damaged by the tenant's children riding their bikes into the fence and with ball games against the fence. The landlord claims they have to replace three fence panels at a cost of \$650.00. The fence is approximately 12 years old and is made of cedar. The remainder of the fence remains in excellent condition.

The tenants dispute that the fence was damaged by their children and state that the fence panel blow over in high winds this year. They claim the boards were rotten and the nails had come out. The tenants do state that their children may have caused some damage to three of the boards in the fence panels by climbing over them.

The landlords and tenants all agree that there was a leak in the property which has caused some damage. The landlords claim the tenants did not allow them access to the property to deal with the leak and this has caused damage to the property. There was also a leak under the fridge which has damaged the linoleum flooring in the kitchen. The landlords claim the tenants did not inform them of this issue with the fridge. The tenants claim that the landlords did not take appropriate steps to deal with the leak in the bathroom and as a result more damage was



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caused to the basement bathroom. They claim the landlord turned up at 10.00 pm one night which was too late to start to deal with the leak. The tenants claim that the landlords were aware of the problems with the fridge as they had attempted repairs to it previously.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The first notice that the tenant disputed was not a valid notice as it was not on the correct form. The landlord served the tenant with a second 10 Day Notice on November 17, 2009. The tenants did not dispute this notice. This Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end on November 27, 2009. The tenant did not pay the outstanding rent within five days nor did she apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the second Notice and grant the landlords an order of possession. The tenant's application to cancel the first notice to end tenancy they received is upheld as this was an invalid Notice and they did not apply to cancel the second Notice.

I also find that the landlords are entitled to recover rent arrears for August, 2009 of \$610.00 for October, 2009 of \$100.00 and for November and December, 2009 of **\$2,200.00** pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears.

I find (on a balance of probabilities) that the tenant's children did cause some damage to the neighbor's fence. However, the neighbor has stated in his letter that the fence is 12 years old. As the average life for a fence is given at 15 years I have reduced the landlords claim for damages of \$650.00 to an amount in keeping with the life of the fence to the sum of **\$150.00**.



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As for the remainder of the landlords claim concerning damages to the rental unit by the tenants I find they have not provided any evidence to support their claims that the tenants contributed to the damages caused by leaks in the bathroom and under the fridge because they did not notify the landlords, or allow the landlords access to the property to make repairs. Therefore, this section of the landlords claim for damages is dismissed without leave to reapply.

The tenants seek money lost or compensation to recover the amount of \$3,756.69 they have paid for Hydro costs. They claim that as the tenancy agreement states that their heating costs are included in their rent the landlord should reimburse them for these costs. However, I find that the information they have provided from BC Hydro for their billing history clearly states that this properties heating is non-electric. Therefore, without any supporting evidence that the heating is electric the tenants are responsible for their own electricity costs as agreed on the tenancy agreement.

I find the tenants must bear the cost of filing their own application.

As the landlords have been largely successful in this matter, they are entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$2,200.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$552.34)
Total amount due to the landlord	\$1,847.66

Conclusion



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The tenant's application to cancel the first 10 Day Notice to End Tenancy is upheld because this was an invalid document; however, the tenants did not apply to cancel the second 10 Day Notice and this remains in force and effect. The remainder of the tenant's application is dismissed without leave to reapply.

**I HEREBY ISSUE** an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

**I HEREBY FIND** in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,847.66**. The order must be served on the tenants and is enforceable through the Provincial Court 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: December 10, 2009.

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Dispute Resolution Officer