



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNSD, FF  
Tenant: CNC, MNDC, ERP, FF

### **Introduction**

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause dated October 5, 2011, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord make emergency repairs and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Parties agreed to end the tenancy on December 15, 2011 and as a result, the Tenant agreed to withdraw his application to cancel the One Month Notice and consented to the Landlords' application for an Order of Possession. As the tenancy will be ending, I find that there is no basis upon which to proceed with the Tenant's claim for emergency repairs and that part of his application is dismissed without leave to reapply.

### **Issue(s) to be Decided**

1. Are there rent arrears and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

### **Background and Evidence**

This fixed term tenancy started on April 16, 2011 and expires on April 30, 2012. Rent is \$1,700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$850.00 at the beginning of the tenancy.

The Parties agree that in September of 2011, the Landlords agreed to compensate the Tenant for making extensive repairs to a deck on the rental property and agreed that he could deduct \$566.66 from his rent for September 2011 and \$200.00 for the following 6 months for a total of \$1,766.66. The Landlords said, however, the Tenant unilaterally deducted a further \$500.00 from his rent for October 2011 without their consent (paying

only \$1,000.00), deducted \$200.00 from his rent for November 2011 (as agreed) but did not pay any rent for December 2011. The Landlords agreed that if the Tenant moved out on December 15, 2011 that they would not hold him liable for any further rent after that date.

The Tenant admitted that he withheld \$500.00 from his rent for October 2011. The Tenant said he did so because he had to make a number of repairs that the Landlords failed to address. In particular, the Tenant said he advised the Landlords on September 21, 2011 that there was a leak in the roof around a sunroom skylight that needed urgent attention. The Tenant said the Landlord, B.S., told him that he would stop by the rental property in a week to have a look at it and did attend on September 25<sup>th</sup>. The Tenant said the Landlord advised him that he could find no evidence of a leak but would return on the Thanksgiving weekend with a roofer to have a look. The Tenant said the Landlord did not come by so he made the repair himself.

The Tenant also claimed that on June 19, 2011 a water pipe in the basement bathroom burst causing the ceiling to collapse and a light to shatter. The Tenant said the Landlords repaired the water pipe but did not repair the ceiling or light. The Tenant also said that the pipe started leaking again and he advised the Landlords about it but they did not come back to fix the leak. Consequently, the Tenant said he had someone repair the leak at the beginning of October, 2011.

The Tenant said the Landlords installed a light sensor in the driveway but it did not work. Consequently, the Tenant said he had the light sensor hooked up to the electrical and also replaced 2 broken toilet seats. The Tenant said he gave the Landlords an invoice totalling \$500.00 for these repairs. The Tenant argued that during the tenancy, he and the Landlords established a practice of deducting repair amounts from his rent. The Tenant admitted that on this occasion, he did not have the Landlords' prior approval to make the repairs and deduct them from his rent.

The Landlords claimed that they have done many repairs to the rental unit at the Tenant's request in a timely manner. The Landlords admitted that there would have been some delay in attending to matters from June onward due to the illness and subsequent death (in late-July) of a close family member. The Landlords said the Tenant made his rent payment for October on October 5, 2011 but they were unaware as to why it was \$500.00 short until he provided them with an invoice on or about October 19, 2011 for \$502.50 which was unsupported by any receipts. The Landlords argued that the Tenant deducted amounts on October 5, 2011 for repairs (such as the roof) that had not been done yet.

The Landlords said they would not have given the Tenant authorization to make repairs to the roof because any repairs would have been made under the warranty. The Landlords said they also would not have authorized the Tenant to make repairs to the driveway light because he is not a qualified electrician.

## **Analysis**

Section 62(2) of the Act says that “if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.” To that end, I find that the Parties have agreed to settle part of this dispute as follows:

1. The Tenant agrees to withdraw his application to cancel the One Month Notice to End Tenancy for Cause dated October 5, 2011;
2. The Parties agree that the Landlords will receive an Order of Possession to take effect on December 15, 2011; and
3. The Landlords agree that the Tenant will not be responsible for rent after December 15, 2011.

Section 33(5) of the Act says that “a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for them and gives the Landlord a written account of the emergency repairs accompanied by a receipt for each amount.”

Section 33(3) of the Act says that “a Tenant may only have emergency repairs made 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 a number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- (c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(1) of the Act defines an emergency repair as one that is urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property and is made for the purpose of repairing **major** leaks in pipes or the roof damaged or blocked water or sewer pipes or plumbing fixtures and electrical systems (as well as others).

I find that none of the repairs done by the Tenant and set out in his invoice are emergency repairs as defined by s. 33(1) of the Act. In particular, I find that there is insufficient evidence that either the leak in the roof around a skylight, or the pipe in the bathroom were “major” leaks that required urgent attention. I also find that repairs to a toilet seat or exterior light do not qualify as “emergency repairs.” Consequently, I find that the Tenant was required to obtain either the prior authorization of the Landlords to have these repairs done by an approved repair person or to obtain an Order of the Residential Tenancy Branch requiring the Landlords to make the repairs. In other words, I find that the Tenant had no authority under the Act to make the repairs himself or to hire someone not authorized by the Landlords to do so and therefore, I find that

there was no basis for him to deduct amounts for those repairs from his rent for October 2011.

As a further consequence, I find that the Landlords are entitled to recover unpaid rent for October 2011 in the amount of \$500.00 as well as unpaid rent for the period, December 1 – 15, 2011, in the pro-rated amount of \$822.59 for a total of \$1,322.59. However, I also find that the Tenant is entitled to be compensated pursuant to the Parties' agreement whereby the Tenant would be credited \$1,766.66 for his labour in re-building the deck. I find that \$566.66 was credited to the Tenant for September 2011 rent and \$200.00 for October and November rent. Consequently, I find that the Tenant is entitled to apply the unused credit of \$800.00. As a result, I find that the Landlords are entitled to unpaid rent as follows:

October 2011:	\$500.00
December 2011:	<u>\$822.59</u>
Subtotal:	\$1,322.59
Less: Credit:	<u>(\$800.00)</u>
Balance owing:	\$522.59

As any award of the filing fee to each of the Parties would be offsetting, that part of their applications is dismissed without leave to reapply ***I order the Landlords pursuant to s. 38(4) of the Act to keep \$522.59 of the Tenant's security deposit in full satisfaction of their claim for unpaid rent.*** The balance of the security deposit must be dealt with in accordance with s. 38 of the Act.

### **Conclusion**

The Tenant's application to cancel a One Month Notice and for emergency repairs is dismissed without leave to reapply. An Order of Possession to take effect on December 15, 2011 has been issued to the Landlords and a copy of it must be served on the Tenant. The Order may be filed in the Supreme Court of British Columbia 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: December 08, 2011.

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Residential Tenancy Branch