



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and to an order to reduce rent. The hearing was conducted via teleconference and was attended by both tenants and the landlord's agent.

During the hearing the tenants clarified that they were also seeking an order to have the landlord complete repairs. I note that the tenants' original Application for Dispute Resolution had included the request to have the landlord make repairs but that it had been crossed out and initialed by the male tenant. The tenant indicated he thought had been asking for the repairs to be made as well. The tenants also clarified that they are seeking a retroactive rent reduction for work already completed.

Based on the tenants' submission I accept the intention of the tenants was to apply to have the repairs completed and for a rent reduction until the repairs are made and have considered both in this decision.

At the outset of the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in the portion of their Application seeking to cancel the notice to end tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order requiring the landlord to make repairs to the rental unit and property; to a rent reduction until repairs are made and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 46, 66, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in the portion of their Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The tenant testified the tenancy began in May 2009 as a month to month tenancy for the monthly rent of \$930.00 due on the 1<sup>st</sup> of each month with a security deposit of \$465.00 and a pet damage deposit of \$300.00 paid. The landlord's agent submits that he did not disagree with this information but that as the current landlord only purchased the property a year ago and the former owner did not provide any documentation on the tenancy, he cannot confirm some of the details.

The tenants submit that have a number of substantial repairs that they have been seeking the landlord to make. The tenants submit they have provided written requests to the landlord at least 5 times since March 2013 when the landlord has attended the property to collect rent. The letters are dated March 1, 2013; April 1, 2013; May 1, 2013; June 15, 2013; and July 1, 2013.

The tenants list of repairs and issue includes:

1. A complaint about a rat and mouse infestation;
2. A request to sand the floors in the living room
3. Black mould in the bedroom;
4. Paint falling off the walls in the bedroom;
5. A hole in the kitchen sink;
6. Replacement of the fuse box;
7. Bathroom hot water tap repairs;
8. Yard work that had not been completed in 6 months;
9. Tear in the master bedroom carpet;
10. Broiler in the oven; and
11. No copy of a rental agreement.

The landlord testified that he had not received any written requests from the tenants but that he had had some verbal requests which he had acted upon such as sending his staff over to clear the yard; replacement of the heating system; inspection and treatment for rodent infestation.

The tenants submit that they had informed the landlord the person he sent over to start on the yard work is a person who they do not want any contact from due to altercations

between the female tenant and the worker and so they refused him access. The tenants submit that the next person sent by the landlord stopped mid day and never returned and so the tenants hired someone on their own.

The tenants submit that the second day their own crew was there the landlord sent additional staff. They submit the landlord's workers completed the backyard and the tenant's crew completed the front yard. The tenants seek a rent reduction of \$300.00 based on their cost to have the crew complete the work in the front yard.

The landlord submits that the tenants failed to pay the rent in full for the month of June 2013 and that they have paid no rent at all for July or August 2013. The landlord testified the tenants paid \$400.00 for June 2013.

The tenants submit that they withheld rent because the landlord has failed to make the repairs requested and that they could pay the landlord all of the rent owing except for the \$300.00 they paid to have the yard cleaned up and the \$500.00 owing for June 2013. The tenants explained the bank had made an error in their account which will be resolved shortly for the tenants to pay the balance of June 2013 rent.

The tenants provided a copy of a 10 Day Notice to End Tenancy issued by the landlord on July 18, 2013 with an effective vacancy date of July 28, 2013 citing the tenants had failed to pay rent in the amount of \$1,430.00 due by July 1, 2013. The tenants submitted an amendment to their Application for Dispute Resolution on July 19, 2013 seeking to include the issue of the Notice in this hearing.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

While the tenants did amend their original Application to include seeking to cancel within 5 days this does not absolve the tenants of their requirement to pay any outstanding rent as identified in the Notice within that 5 day period if they do not have authority under the *Act* to withhold such payment.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Some authorities under the *Act* include an overpayment of a security deposit; any amounts paid that were paid in response to an invalid notice of rent increase; under authorisation with an order from a Residential Tenancy Branch Arbitrator; and after the payment for the cost of emergency repairs under specified circumstances.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

As the only “repairs” the tenants have paid for was the yard work, I find that the tenants did not have emergency repairs completed and therefore were not entitled to withhold any rent for July and August 2013 resulting from their payment made to have the yard work completed in the front yard.

In addition, as the tenants state that the reason for the failure to pay the full rent in June 2013 was due to a bank error I find the tenants had no authority under the *Act* to withhold any of the rent for June 2013.

For these reasons I find the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 18, 2013 is valid and enforceable and the tenants must vacate the property.

As a result of this finding I find it unnecessary to make any findings regarding future rent reductions or orders to have the landlord complete repairs. In relation to the tenants’ claim for a retroactive I accept the landlord’s position that he had not received the tenants written requests because the landlord has made repairs to the property during the tenancy based on verbal requests.

In addition the tenants testified they provided the landlord with these written requests when the landlord came by to collect the rent. As the tenants had not paid rent for July 2013 they could not have provided the landlord with this written request and yet they testified it had been provided to the landlord.

For the above reasons I dismiss the tenants' claims for any retroactive rent reductions. As the tenants have been unsuccessful in the Application I dismiss their request to recover the filing fee from the landlord.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 08, 2013

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Residential Tenancy Branch

