



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC MNDC RP RPP RR

### Preliminary Issues

After a review of the application the respondent Landlord indicated the Tenant had provided evidence to dispute the two 1 Month Notices that were issued to end the tenancy for cause. The Landlord stated that he was prepared to review these Notices during today's hearing.

The Tenant confirmed it was his intention to dispute these Notices during today's hearing and requested that I amend his application to include "cancel a notice to end tenancy issued for cause".

Based on the aforementioned, I approve the Tenant's request to amend the application to include the request to cancel the Notices to end tenancy issued for cause, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, obtain an Order to have the Landlord make repairs to the unit, site or property, return the tenant's personal property, and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to end this tenancy and obtain an Order of Possession as a result of that breach?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?
5. If so, has the Tenant proven entitlement for reduced rent or rent abatement for services or facilities agreed upon but not provided.
6. Does the Landlord have the Tenant's personal property in his possession?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective July 1, 2010. Rent is payable on the first of each month in the amount of \$400.00 and is paid directly from Employment and Assistance to the Landlord. The Tenant paid a security deposit of \$200.00 on July 1, 2010.

Witness (1) testified she has been a guest at the rental unit on several occasions over the past month and she has witnessed firsthand that there was "stuff not done". The tub was not working as the water was not draining. She stated the handyman fixes things but does not do it right. He put a deadbolt in but they cannot lock it. He was supposed to fix the trim around all the windows but he only did a couple of them.

The Landlord disputed Witness (1)'s testimony stating that all five windows were repaired, the three upper windows and the two downstairs windows.

Witness (2) testified that he is a friend of the Tenant and that he is at the rental unit on a daily basis. He has been with the Tenant when he requested the Landlord to fix things. The basement flooded with 3 to 4 inches of water and the repairman did come and jack hammer the concrete in an attempt to repair the leaks. Some leaks were stopped however the basement is still leaking and has not been completely repaired. He stated that some repairs have been completed recently but the front door continues to pop open. He confirms that the Tenant told the Landlord to leave and bring back qualified tradesmen.

Witness (3) was brought onto the telephone to testify and confirmed he was the maintenance person hired by the Landlord. He stated he completed many repairs at the rental unit which included: replacing the toilet, bathroom taps, seal on the door, repaired other taps, drainage for the tub, resealed and caulked all five windows, installed a new deadbolt that works just fine, and repaired the leaks in the concrete basement. There is still one small leak that needs to be repaired. This type of repair work sometimes takes three or four attempts before all the leaks are repaired. The remaining leak has created a small puddle that is about 2 feet in diameter and about ¼ inch deep which is now frozen due to the winter weather. After completing his testimony the Witness and Tenant began to argue. The Witness said to the Tenant "I told you I didn't want to get involved in this".

The Landlord testified the Tenant demanded that repairs be completed to the unit before he occupied it. So he worked on completing the requested repairs and completed a move-in inspection report on September 1, 2010 in the presence of the Tenant. The Tenant signed the inspection form which indicates "DONE" in section W "repairs to be completed at start of tenancy".

The Landlord stated the Tenant requested repairs to be completed to the bathtub as it was not draining properly so on December 23, 2010 he attended the unit with a contractor he hired to snake out the drain. When the work was completed the contractor requested the Tenant to come up and see that the drain was working properly now. The Tenant refused to look at the draining tub and began complaining about other things. The Tenant used foul language towards the Landlord and embarrassed him in front of the contractor. He began making accusations that the Landlord was hiring kids to perform the repairs instead of hiring professional contractor. He was disrespectful so the Landlord told the Tenant he would be issued an eviction notice and the Landlord left. The Landlord returned December 23, 2010 and personally served the Tenant with a 1 Month Notice to End Tenancy for cause.

The Tenant disconnected from the hearing at 2:01 p.m. The Tenant re-joined the hearing at 2:09 p.m. and stated that his telephone went dead. I informed the Tenant that the hearing proceeded in his absence in accordance with the *Residential Tenancy Branch rules of procedure*, and I informed him of the Landlord's testimony that was provided during his absence.

The Tenant testified and confirmed his tenancy was effective July 1, 2010 but he did not occupy the unit until the end of July 2010. He states he was hospitalized from August 4, 2010 to September 1, 2010 and when he returned to the unit the Landlord demanded that he sign the move in inspection report. So all this time he paid rent and did not

occupy the unit. He returned home to find his back door wide open and he had been robbed. He was broken into the following week and had to file two police reports. He stated that during his absence the Landlord entered his rental unit to replace the stove and he is of the opinion that the Landlord failed to lock the door which allowed his possessions to be stolen.

The Tenant is seeking a monetary order of \$4,600.00 which consists of amounts for the stolen property as follows: \$1,196.00 for his computer, \$1,000.00 for his bike, \$787.00 to replace his pills (medication) that was stolen, plus \$800.00 to reimburse him for the cost he had to pay to move into this rental unit. The Tenant confirmed he did not have tenant's insurance on his contents.

He is seeking an Order to have the Landlord repair his front door. He stated the police attended the unit in early July 2010 and broke the door open with a battering ram. This door is metal and is now bent so he claims the door does not close properly.

In closing the Landlord stated he did not believe the Tenant's story about why the police raided his rental unit. He said the first time he was told about the raid was July 13, 2010. He said the door closes fine and the deadbolt works as stated by the maintenance person. He wants this tenancy to end and he requested I issue him an Order of Possession for as soon as possible.

The parties agreed to consider a mutual agreement to end the tenancy and were left for five minutes to discuss a settlement. Upon my return the parties advised their discussion broke down and they were requesting that I make a ruling based on the application before me.

### Analysis

I have carefully considered the testimony and evidence before me which included, among other things, a copy of a move-in inspection report dated September 1, 2010 and signed by both parties, copies of hand written statements signed by the Tenant and his witnesses, signed statements from the Landlord and his contractors, an old version of the four page 1 Month Notice to End Tenancy, and a copy of a current version of the two page 1 Month Notice to End Tenancy.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant has sought \$4,600.00 in compensation however only provided a description of \$3,783.00 for his claim which included: \$2,983.00 of articles stolen (Computer \$1196.00, Bike \$1000.00, \$787.00 pills) plus \$800.00 for costs he allegedly incurred to move into the rental unit. After careful examination of the evidence I find the Tenant provided insufficient evidence to prove this loss was the result of the Landlord breaching the Act. The Tenant also failed to mitigate his losses by having tenant's content insurance to cover the cost of the articles stolen. Therefore I dismiss the Tenant's claim of \$4,600.00 without leave to reapply.

There is no evidence to support the Landlord is in possession of the Tenant's property. Therefore I dismiss the Tenant's request for an Order to have the Landlord return the Tenant's personal property.

Section 32 of the Act provides the Landlord and Tenant obligations to repair the rental unit 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, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept that there continues to be a leak in the basement causing a small accumulation of water. Therefore I hereby order the Landlord to initiate repairs to the basement leak(s) upon receipt of this decision.

Upon review of the remaining testimony and evidence the move-in inspection report from September 1, 2010, indicates all requested repairs were completed and everything was recorded as being satisfactory. Therefore, I find there is insufficient evidence to prove the Landlord is responsible for the remainder of the repairs being requested and not the Tenant, pursuant to section 32 of the Act, as listed above. Therefore I dismiss the Tenant's claim for reduced rent for repairs, services or facilities agreed upon but not provided, without leave to reapply.

Upon review of the 4 page 1 Month Notice to End Tenancy issued December 23, 2010, this Notice is an old version and no longer meets the requirements of section 52 of the Act for form and content. Therefore I find this Notice not to be completed in accordance with the requirements of the Act and the Notice is hereby cancelled and is of no force or effect.

Upon review of the 2 page 1 Month Notice to End Tenancy, issued December 23, 2010, I find the Notice not to be completed in accordance with the requirements of the Act. Page two of this notice has not been completed to advise the Tenant the reason(s) for issuing the Notice. The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to this breach; therefore, the Landlord has the burden of proving that the tenant was served with the 1 Month Notice to End Tenancy which meets the form and content under section 52 of the *Residential Tenancy Act*. Based on the aforementioned I find the 2 page 1 Month Notice to be invalid and is hereby cancelled and of no force or effect.

Conclusion

The 4 page 1 Month Notice to End Tenancy for Cause issued December 23, 2010, is HEREBY CANCELLED and is of no force or effect.

The 2 page 1 Month Notice to End Tenancy for Cause issued December 23, 2010, is HEREBY CANCELLED and is of no force or effect.

The Landlord is HEREBY Ordered to initiate repairs to the basement of the rental unit upon receipt of this decision.

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: February 03, 2011.

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Residential Tenancy Branch