



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, CNR, MNDC, OLC, RP, RR

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. As English was neither party's first language, I encountered some initial difficulties understanding the tenant at the beginning of the hearing. However, this challenge was soon remedied by adjusting the telephone settings and I am satisfied that I obtained sufficient understanding of the parties' testimony to reach a decision.

The landlord testified that the person identifying himself as the tenant, MF, was not in fact the tenant. The person identifying himself as the tenant gave sworn testimony that he was in fact Mf, and on that basis I accepted his sworn testimony as that of the tenant, MF.

At the hearing, the landlord requested an end to this tenancy and an Order of Possession if the tenant's application to dismiss the notices to end tenancy were dismissed.

The landlord confirmed that the only 1 Month Notice he issued was a handwritten notice dated May 1, 2012, entered into written evidence by the tenant. Section 52(e) of the *Act* requires a landlord's Notice to End Tenancy to be in the approved form. As both parties agreed that this did not occur, I advised the parties at the hearing of my finding that the landlord's handwritten 1 Month Notice of May 1, 2012 was of no legal effect.

At the hearing, the landlord testified that he posted a 10 Day Notice on the tenant's door at 2:00 p.m. on May 8, 2012. Although the tenant initially testified that he did not receive the landlord's 10 Day Notice, he acknowledged entering into written evidence a copy of the landlord's Proof of Service document in which the landlord's spouse attested to having witnessed the landlord post the 10 Day Notice on the tenant's door on May 8, 2012. As neither party had provided me with a copy of the 10 Day Notice, I asked the landlord if the landlord had access to a fax machine to provide me with a copy of the 10 Day Notice by 3:45 p.m. on the day of the hearing. The landlord said that this was possible and committed to fax the copy of the 10 Day Notice to me within the hour. The Residential Tenancy Branch (RTB) received a second copy of the landlord's Proof of Service document by fax at 2:18 p.m. on the day of the hearing. No 10 Day Notice was attached to this document.

The tenant testified that he handed a copy of his dispute resolution hearing package to the landlord on May 10, 2012. The landlord disagreed with this testimony, stating that he was not handed this document until the week before this hearing. However, the landlord said that he was given sufficient notice from the tenant to respond to the case against him as set out in the tenant's application for dispute resolution. I am satisfied that the tenant served a copy of his dispute resolution hearing package in accordance with the *Act*.

#### Issues(s) to be Decided

Has the landlord served a 10 Day Notice to the tenant in accordance with the *Act*? If so, should the landlord's 10 Day Notice be cancelled? If the landlord's 10 Day Notice were served and is not cancelled, is the landlord entitled to an Order of Possession for unpaid rent? Is the tenant entitled to a monetary award for losses arising out of this tenancy or for services committed to but not provided by the landlord during this tenancy? Is the tenant entitled to a reduction in rent? Should an order be directed to the landlord to conduct repairs to the rental unit? Should any other orders be issued against the landlord with respect to this tenancy?

#### Background and Evidence

This periodic tenancy commenced on or about April 1, 2010 on the basis of an oral agreement. The landlord testified that the monthly rent was set at \$550.00. The tenant testified that the monthly rent was \$650.00. Fortunately, the parties were able to agree

that the landlord continues to hold the tenant's \$300.00 security deposit paid on or about April 1, 2010.

The landlord testified that the tenant has not paid any portion of his May 2012 rent. The tenant testified that he paid his rent in full by a cash payment on May 10, 2012. Both parties agreed that the landlord has not issued receipts for any of the tenant's cash payments during this tenancy.

The only written evidence from the tenant with respect to his application for a monetary award, repairs and the issuance of the above orders were the following two statements on his application for dispute resolution:

*I want kitchen repaired since two years*

*I want compensation of \$150.00 per month x 24 months.*

### Analysis

At the hearing, the landlord testified that the tenant did not pay his May 2012 rent to the landlord and, for that reason, the landlord issued the 10 Day Notice. However, the landlord gave sworn testimony that no amount of unpaid rent was identified in the 10 Day Notice posted on the tenant's door on May 8, 2012. As this is a critical portion of the 10 Day Notice, I asked the landlord to confirm my understanding of this sworn testimony. The landlord repeated that there was no unpaid rent identified in the 10 Day Notice posted on the tenant's door.

Based on the landlord's failure to provide a copy of the 10 Day Notice as requested later on the afternoon of the hearing, I find that the landlord has not provided sufficient evidence to demonstrate that the tenant was served with a 10 Day Notice in the approved form as required by section 52(e) of the *Act*. Rather, based on a balance of probabilities, I find it more likely than not that the document posted on the tenant's door on May 8, 2012 was the Proof of Service document entered into written evidence by the tenant and faxed to the RTB later on the afternoon of May 24, 2012. For that reason, I allow the tenant's application to cancel any 10 Day Notice allegedly served by the landlord to the tenant on May 8, 2012. This tenancy continues.

Turning to the tenant's application for a monetary award, I note that section 67 of the *Act* establishes that if loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the loss bears the burden of proof. The claimant must prove the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the

part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss.

At one point in this hearing, the tenant withdrew his application for a monetary award in recognition that he had not provided any written evidence to support his application. After he was unable to resolve the issues in dispute with the landlord at the hearing, the tenant asked that his application for a monetary award be reinstated and considered as part of his application. When asked for any oral testimony that would support his application for a monetary award, the tenant said that he had nothing further to say.

Based on the scarcity of evidence from the tenant in support of his application for a monetary award, I dismiss the tenant's application for a monetary award without leave to reapply.

Similarly, the tenant said nothing at the hearing with respect to his request for repairs and expressed an interest in ending his tenancy by the end of June 2012. As the tenant has also failed to provide sufficient evidence to demonstrate the need for an order for repairs to the rental unit, I dismiss his application for this item without leave to reapply.

I also dismiss the tenant's application for an order requiring the landlord to comply with the *Act* without leave to reapply, as the tenant provided no information regarding this aspect of his application for dispute resolution. For similar reasons, I dismiss the tenant's application for a reduction in rent without leave to reapply.

#### Conclusion

I find that the alleged 1 Month Notice of May 1, 2012 and the alleged 10 Day Notice of May 8, 2012 are of no legal effect and are cancelled. This tenancy continues.

I dismiss the remainder of the tenant's application for dispute resolution 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: May 24, 2012

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Residential Tenancy Branch