



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR; ERP; LAT; LRE; OLC; RP; FF

### **Introduction**

This Hearing was convened in response to the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent issued June 2, 2012; for an Order that the Landlord make emergency and regular repairs; for an Order authorizing the Tenant to change the locks on the rental unit; for an Order suspending or setting conditions of the Landlord's right to enter the rental unit; for an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and provided affirmed testimony. It was determined that the Landlord was served with the Notice of Hearing documents by registered mail, sent June 6, 2012.

### **Preliminary Matters**

The Tenant rescinded his application for an Order authorizing him to change the locks to the rental unit and an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

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

- Should the Notice to End Tenancy issued June 2, 2012 (the "Notice") be cancelled?
- Should the Landlord be ordered to comply with the Act?
- Should the Landlord be ordered to make general and emergency repairs to the rental unit?

### **Background and Evidence**

The Landlord testified that he is the current Landlord and that his agent was Landlord previously under a different tenancy agreement. He testified that neither he nor his

agent owned the rental property, and that they rent it and others from the owner, which is an incorporated company.

On May 4, 2012, the Landlord's agent, and another person identified as a "landlord", and the Tenant were before a Dispute Resolution Officer with respect to cross applications. The Landlord's agent and the other "landlord" had applied for a Monetary Order for damage to the rental unit. The Tenant had applied for compensation for damage or loss under the Act, regulation or tenancy agreement and Orders that the Landlord's agent make regular and emergency repairs to the rental unit.

On May 8, 2012, the Dispute Resolution Officer provided her Decision with respect to the cross applications. A copy of the Decision was provided in evidence. The Landlord's agent's application was dismissed. The Tenant was awarded compensation in the amount of \$2,365.34. The Dispute Resolution Officer ordered that the Tenant deduct \$1,182.67 from June, 2012 rent and \$1,182.67 from July, 2012 rent. The following Orders were also made,

"Pursuant to section 62 of the Act, I HEREBY ORDER the Landlord to hire a licensed plumber to repair the ensuite tap and inspect and either repair or replace the hot water tank to ensure it can accommodate normal use for the number of occupants in both rental suites no later than **May 31, 2012**.

Pursuant to section 62 of the Act, I HEREBY ORDER the Landlord to have the dead tree cut down by a licensed professional tree faller and all resulting tree debris removed from the rental property no later than **May 26, 2012**.

Pursuant to section 62 of the Act, I HEREBY ORDER the Landlord to have the old fridge which is currently stored in the rental unit garage to be removed from the property no later than **May 19, 2012**.

The evidence supports the parties have established an acceptable form of communications via electronic e-mails. Therefore I HEREBY ORDER pursuant to section 62 of the Act, that for the purpose of completing the above repair orders that the Landlord provide notice to attend the unit, in accordance with section 29 of the Act, via e-mail."

Monthly rent is \$3,700.00, due on the first day of each month. The Tenant testified that he followed the May 8<sup>th</sup> Order and paid rent only \$2,517.33 for June rent, after deducting half of his award as instructed. He stated that the Landlord gave him a Notice to End Tenancy, for \$1,182.67 in unpaid rent which is the amount he was ordered to deduct.

The Landlord stated that he filed an Application for Review of the May 8, 2012 Decision and therefore he submitted that the Orders of May 8 were suspended until the outcome of the Application for Review. He testified that his Application for Review was dismissed and that he was in the process of filing documents in Supreme Court for review. The Landlord provided a copy of the Decision on his Application for Review, which is dated May 28, 2012. The Landlord provided no evidence with respect to any Supreme Court Judicial Review documents and stated that he was in the process of filing, but had not filed yet.

The Tenant clarified that the repair Orders he is seeking are the same Orders that were made by the Dispute Resolution Officer on May 8, 2012, and which the Landlord has not yet complied with. The Tenant confirmed that there are no new repair Orders being sought.

The Landlord stated that the hot water heater was fine and that it did not require a professional plumber. He stated that he or his handy man could fix the dripping faucet in the bathroom within one week and that it was not necessary to hire a professional plumber to do the job. The Landlord testified that he might need authority from the City to remove the dead tree and that it would take some time to get the necessary authorization. The Landlord stated that if a permit is required, he would estimate that the tree could be removed by a licensed arborist within 2 months. The Landlord stated that the fridge in the garage belongs to the owner and that it matches other appliances at the rental property. However, the Landlord testified that he would remove the fridge within one week.

The Landlord stated that the Tenant was not allowing access to the rental property in order for him to comply with the repair orders. The Landlord stated that the Tenant is subverting or restricting the Landlord from complying with the repair orders. He also stated that he is selling the rental property and that the Tenant will not allow his realtor to show the rental property. The Landlord and the Tenant both provided copies of notices for accessing the rental property.

The Landlord's witness is a licensed realtor who has listed the rental property for sale. He stated that he requires access to the rental property.

The Tenant stated that he is happy to provide the realtor with access upon receipt of 24 hour written notice that complies with the requirements of Section 29 of the Act. The Tenant testified that the Dispute Resolution Officer made reference to how access was to be sought and that she gave instructions in her May 8 decision that **only** the realtor could give Notice to access the rental unit for viewing purposes.

## **Analysis**

Both parties were confused about the definition of "Landlord". For the parties' information, the Act defines a Landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that the Tenant does not owe any rent for the month of June, 2012, and that the Notice to End Tenancy dated June 2, 2012 (the "Notice"), is not a valid notice. Therefore the Notice is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I do not accept the Landlord's explanation for not complying with the Orders made May 8, 2012. If a party files an Application for Review of a Decision or Order, a dispute resolution officer **may** grant the application and set the matter down for another Hearing. The dispute resolution officer **may** also suspend orders until the new Hearing has been determined. In this case the applicant/Landlord's Application for Review was dismissed and the Decision and Orders were confirmed.

I find that the notice seeking access of the rental unit does not comply with Section 29 of the Act because it does not provide a reason for the access. I carefully read the May 8 Decision and Orders, but could not find any **orders** providing that the realtor could be the **only** person to issue notices for accessing the rental unit for the purposes of

showing it to prospective buyers. The Dispute Resolution Officer merely states, on page 10 of the Decision,

“The Landlords request access to the unit for “anticipated” showings for three blanket access times of one hour on weekdays and once on each weekend because they have decided to sell their property. In the absence of any proof of the Landlords’ intent to sell this property, and given the evidence before me that the Landlords changed their attitude because the Tenants sought remedy through dispute resolution, I find this request to be retaliatory and harassing in nature, not to mention it does not meet the requirements of section 29 of the Act, as listed at the end of this decision. Accordingly I hereby dismiss the Landlord’s request for blanket access times for anticipated showings.

If the Landlords truly intend to list their property for sale on MLS then they need to arrange to have a licensed realtor contact the Tenants to make arrangements to view the home once, prior to listing, and then to seek access for legitimate showings in accordance with the Act.”

The Dispute Resolution Officer did make an Order with respect to notices for access for the purpose of carrying out her **repair orders**, and I caution the Tenant that such notice, given by e-mail, is sufficient notwithstanding the provisions of Section 88 of the Act which does not provide for service by way of e-mail.

During the Hearing, the Landlord attempted to re-argue some of the issues that were before the Dispute Resolution Officer on May 4, 2012. I explained to the parties that these issues have already been decided and are therefore *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

The Tenant’s application for repair Orders is also *res judicata*, as the Orders sought have already been made.

**In his Application for Dispute Resolution the Tenant did not apply for a rent reduction or for compensation for damage or loss under the Act, regulation or tenancy agreement, with respect to the Landlord’s failure to comply with the previously ordered repairs. For the information of both parties, the Tenant retains the right to file another application seeking compensation and/or a rent reduction.**

The Tenant did not identify what section of the Act or regulation, or what term of the tenancy agreement he seeks the Landlord to comply with, and therefore this portion of his application is dismissed.

The Landlord is hereby cautioned of the provisions of Section 94.1 of the Act, which states:

**Administrative penalties**

**94.1** (1) Subject to the regulations, **the director may order a person to pay a monetary penalty** if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations, or

(b) **failed to comply with a decision or order of the director.**

(emphasis added)

The Tenant's Application had merit and I find that he is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct **\$50.00** from future rent due to the Landlord.

**Conclusion**

The Notice to End Tenancy issued June 2, 2012, is **cancelled**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct the cost of the filing fee, **\$50.00**, from future rent due to the Landlord.

The Tenant's application for Orders authorizing him to change the locks to the rental unit and suspending or setting conditions of the Landlord's right to enter the rental unit is dismissed as withdrawn, with leave to reapply.

The Tenant's application for repair Orders is dismissed as *res judicata*.

The Tenant did not identify what section of the Act or regulation, or what term of the tenancy agreement he seeks the Landlord comply with and therefore this portion of his application is dismissed.

**The Tenant did not apply for a reduction in rent, or for compensation for damage or loss under the Act, regulation or tenancy agreement and is at liberty to do so.**

**The Landlord is hereby cautioned of the provisions of Section 94.1 of the Act.**

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: July 3, 2012.

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Residential Tenancy Branch