



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Norman Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNR; MNDC

### **Introduction**

This Hearing dealt with an application to cancel a Notice to End Tenancy for Unpaid Rent issued May 2, 2013, and compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant KF ("KF") gave affirmed testimony at the Hearing.

It was established that KF served the Landlord with the Notice of Hearing documents by registered mail sent on May 6, 2013, to the Landlord's address for service on the Notice to End Tenancy. A copy of the registered mail receipt and tracking number was provided in evidence. KF testified that he served the Landlord with his documentary evidence on May 22, 2013, at the Landlord's office.

I accept KF's affirmed testimony and documentary evidence that the Landlord was duly served. The Landlord did not sign into the conference and the Hearing continued in his absence.

### **Preliminary Matters**

The rental property is a 6 unit, two storey walk up. The KF lives in rental unit "B". The Notice issued May 2, 2013, names the applicant MI ("MI") as the sole "tenant" for "A and B". However, at a previous Hearing on May 10, 2013, the Arbitrator found that the Landlord does not have a tenancy agreement with MI for either "A" or "B". Therefore, I find that the Notice issued May 2, 2013, is not a valid Notice.

The KF asked if he could amend his application to include a request to cancel a subsequent Notice to End Tenancy for Unpaid Rent issued May 10, 2013 (the "latest Notice"). He stated that he found the latest Notice posted to his door on May 15, 2013.

KF's documentary evidence includes a letter seeking an amendment to cancel the latest Notice.

Although KF did not formally amend his application, I accept that he served the Landlord with his documentary evidence on May 22, 2013, and that therefore the Landlord is aware that KF is seeking to dispute the latest Notice during this Hearing. Therefore, I amended KF's application to include a request to cancel the latest Notice.

### **Issues to be Decided**

Should the Notice issued May 10, 2013, be cancelled?

Is KF entitled to compensation for damage or loss?

### **Background and Evidence**

During the Hearing, KF referred to three previous Decisions and Orders that have been issued surrounding tenancies between the Landlord, KF and MI:

Date of Hearing	Issues to be Decided	Conclusion
<p>Jan 21/13</p> <p>Landlord and KF both attended.</p> <p>Note: Landlord applied for Review Consideration, which was dismissed.</p>	<p>KF's application for monetary compensation and repair orders</p>	<p>Decision dated Feb 19/13:</p> <p><b><u>ORDERS</u></b></p> <p>Landlord to pay \$400.00 in compensation to KF, to be deducted from future rent. A one-time \$300.00 rent reduction for the month of March, 2013.</p> <p>Landlord to make certain emergency repairs no later than February 28, 2013.</p> <p>Landlord to make certain emergency repairs no later than March 15, 2013.</p> <p>Landlord to make certain regular repairs no later than March 15, 2013.</p> <p>Repairs are to be made by certified, licensed or qualified repairmen.</p> <p>Commencing April 1, 2013, KF may deduct</p>

		<p>\$400.00 from rent until all repairs are done.</p> <p>Landlord to post and maintain emergency contact information and to provide KF with receipts for rent paid in cash.</p>
Date of Hearing	Issues to be Decided	Conclusion
<p>Feb 27/13</p> <p>Landlord did not attend, although duly served.</p> <p>Note: Landlord applied for Review Consideration, which was dismissed.</p>	<p>MI's application for an Order that the Landlord comply with the Act.</p>	<p>Decision Feb 27/13:</p> <p>Within 15 days of this Decision, Landlord ordered to provide receipts for rent paid in cash between the months of May 2012 to February 2013.</p>
Date of Hearing	Issues to be Decided	Conclusion
<p>May 10/13</p> <p>Landlord, KF and MI all attended.</p>	<p>Cross Applications:</p> <p>Landlord's application for an Order of Possession, monetary award for unpaid rent, and to retain the security deposit.</p> <p>MI's application to cancel two notices to end tenancy for unpaid rent, compensation for damage or loss, an Order that the Landlord comply with the Act, and a rent reduction.</p>	<p>Decision May 13/13:</p> <p>Finding that MI assigned the tenancy for rental unit "B" to KF, and that the Landlord consented to the assignment by accepting rent from KF for rental units "A" and "B" since April, 2012.</p> <p>Finding that MI has not been a tenant of rental unit "A" since April, 2012, and therefore is not a tenant of the Landlord's for rental units "A" or "B".</p> <p>Landlord's application dismissed in its entirety.</p> <p>MI's application to cancel the two notices granted. Remainder of MI's application dismissed.</p>

KF stated that his current rent, after the rent reduction ordered February 19, 2013, is \$450.00 per month. He testified that he has paid rent in full for rental unit "B" and that he is not a tenant for rental unit "A". He stated that, contrary to the Orders made on February 27, 2013, the Landlord continues to refuse to issue receipts for rent paid in cash. KF stated that there was a tenant in rental unit "A", named "Sara", but that he believes she moved out in February, 2013 and that rental unit "A" remains vacant.

KF stated that the Landlord has issued 6 Notices to End Tenancy for Unpaid Rent since January, 2013; January 12, February 2, March 15, April 1, May 2, and May 10.

KF testified that the Landlord has not done any of the repairs to rental unit "B", pursuant to the Orders made February 19, 2013. These repairs include:

No later than February 28, 2013:

- Repair the blocked water lines to the clothes washing machine
- Repair the bath tub water lines and faucets such that both hot and cold water are available to the tenant.

No later than March 15, 2013:

- Repair the primary heating system such that adequate heat is being provided to the tenant's unit.
- Replace plastic in kitchen window with glass
- Replace refrigerator with a properly functioning clean refrigerator
- Repair drainage problem in kitchen sink
- Install proper lock on exterior door to residential property
- Install a door on the closet in the tenant's bedroom
- Replace flooring in the kitchen
- Clear out and clean the laundry room

KF stated that the Landlord intimidates and harasses him by calling the Police on false allegations, issuing invalid Notices to End the tenancy and working on construction in the rental property's hallway and common areas after midnight.

KF provided electronic evidence, which includes photographs of rental unit "B", and other documentary evidence to support his claim that the Landlord is not complying with Section 32 of the Act, or the Orders made on February 19, 2013.

## **Analysis**

### **Should the Notice issued May 10, 2013, be cancelled?**

The Notice to End Tenancy dated May 10, 2013 (the "Notice"), indicates that FK and MI are in arrears for rent that was due on May 1, 2013, in the amount of \$1,575.00. There is also a notation on the Notice, "Note: arrears March 2013 \$1,575.00 April 2013 \$1,575.00 plus many arrears". The Notice gives the rental address, "front and/or back A and/or B".

The onus is on the Landlord to provide sufficient evidence that a notice to end tenancy is valid for the reasons given on the notice. In this case, the Landlord did not provide documentary evidence or oral testimony with respect to the Notice. FK testified that he does not owe any rent for "B" and that he is not a tenant of "A". The Decision of May 13, 2013, found that MI is not a tenant of either "A" or B". Therefore, I find that the Landlord has not provided sufficient evidence that the Notice is valid, and it is cancelled.

### **The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.**

### **Is KF entitled to compensation for damage or loss?**

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under the Act.

Based on KF's undisputed affirmed testimony, I find that the Landlord has not complied with Sections 32, 26(2) and 28(b) of the Act. I also find that the Landlord has not complied with the director's Orders dated February 19, 2013.

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that the value of the tenancy has been extinguished as a result of the Landlord's failure to comply with Sections 32, 26(2) and 28(b) of the Act. I hereby order that **effective June 1, 2013, rent for "B" is NIL** until all of the repairs and maintenance orders set out above are completed **and the Landlord is successful in an application to have the rent reduction stopped**. To be clear, once the Landlord has completed these repairs, the onus is on the Landlord to be successful in an Application for Dispute Resolution that the rent reduction should cease.

The Landlord is cautioned with respect to the provisions of Section 94.1(1) of the Act, which states:

**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.

### **Conclusion**

**The Notice to End Tenancy issued May 10, 2013, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

**Effective June 1, 2013, rent for “B” is NIL until all of the repairs and maintenance orders set out above are completed by certified, licensed or qualified repairmen and the Landlord is successful in an application to have the rent reduction stopped.**

**The Landlord is cautioned with respect to the provisions of Section 94.1(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: May 31, 2013

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Residential Tenancy Branch