



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RR, NMDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant cancel a 2 Month Notice to End Tenancy for Landlord Use of Property (the "Notice"), issued on May 18, 2013, for a monetary order for loss of services agreed upon but not provided and an order to have the landlord comply with the Act.

Although served with the Application for Dispute Resolution and Notice of Hearing on May 27, 2013, by registered mail, a Canada post tracking number was provided as evidence, the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

### Issues to be Decided

Should the Notice to end tenancy, issued on May 18, 2013, be cancelled?  
Is the tenant entitled to compensation for services agreed upon but not provided?  
Should the landlord be order to comply with the Act?

### Background and Evidence

The tenancy began on February 1, 2013. Rent in the amount of \$570.00.00 was payable on the first of each month. A security deposit of \$200.00 was paid by the tenant.

The tenant's agent stated that they have accepted that the tenancy is ending based on the Notice issued on May 18, 2013. The tenant's agent stated they seek clarification of the vacancy date as they believe the date on the Notice is incorrect. Filed in evidence is a copy of the Notice.

The tenant's agent stated that the landlord had terminated essential services to the rental unit by turning off the electricity and water. The agent stated that they believe this was an attempt by the landlord to force the tenant out of the unit, as there had been previous conversations with the landlord that she wanted to end the tenancy. However the landlord did not want to provide the tenant with proper notice.

The tenant's agent stated that they seek a rent reduction for the month of May 2013, for loss of services that were included in the rent. The tenant's agent stated he and his wife attended to the tenant's rental unit on May 15, 16, 17, 2013 and the tenant was without electricity, water and heat. The agent stated on the evening of May 17, 2013, he and his wife went to see the landlord on the tenant's behalf and told her, that if she did not restore these services that they would be moving the tenant to a hotel and then seeking compensation for that expense from the landlord. The agent stated later that night the services were restored.

The tenant's agent stated in the morning of May 18, 2013, the landlord had again shutoff these services, however, the landlord later that day restored the services. The tenant seeks a rent reduction or compensation for loss of those services that were agreed upon but not provided.

The tenant's agent stated due to the loss of electricity the tenant's food that was in the refrigerator spoiled, which included condiments and leftovers. The agent stated a reasonable amount for compensation would be \$50.00.

The tenant's agent stated that they are requesting the tenants rent be reduced by \$20.00, because when they were negotiating the rent prior to the tenancy commencing the landlord increased the asking price of rent by \$20.00, due to the tenant having a pet. The tenant seeks compensation in the in the amount of \$80.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant has accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on May 18, 2013. The tenant seeks to clarify the effective vacancy date as they allege the vacancy date is incorrect.

Under Section 49 of the Act, a landlord may end a tenancy for the purpose of landlord's use of property by giving notice to end the tenancy effective on a date that must be the day given before the date rent is payable and not earlier than two months after that date.

In this case, the landlord gave notice on May 18, 2013, to end the tenancy on July 18, 2013, which is earlier than the Act permits.

Under section 53 of the Act, if the date on the notice is earlier than the Act allows that date automatically corrects to the earliest date permitted. In this case, the earliest date permitted under the Act is July 31, 2013. Therefore, I find the date the tenancy will legally end is **July 31, 2013**. The tenant retains the right to end the tenancy earlier under section 50 of the Act.

The undisputed testimony of the tenant's agent was the landlord terminated the services of the electricity and water to the rental unit that were included in the rent for a period of four days in the month of May, 2013, in the attempt to force the tenant out of the rental unit.

Under section 27 of the Act, a landlord must not terminate or restrict a service that is essential to the tenant's use of the rental unit as living accommodations, if they are provided as a term of the tenancy agreement.

As a result, I find the landlord breached section 27 of the Act, when they terminated the essential services of electricity and water to the rental on May 15, 16, 17 and 18.

I further find that the action of the landlord devalued the tenancy by 100% for each of those days as the accommodation was no longer livable without these services. Therefore, the tenant is granted compensation based on the daily rent of \$18.73, for that loss in the amount of **\$74.95**.

I order the landlord to provide essential services to the rental unit, which were included in the tenants rent as required by section 27 of the Act. If the landlord fails to comply with this order, the tenant is at liberty to apply for further compensation.

As a result, of the landlord breaching the Act, by terminating essential service the tenant food that was stored in the refrigerator was spoiled. The evidence of the tenant's agent was that the loss was valued at approximately \$50.00. I find that amount reasonable. Therefore, the tenant is granted compensation for loss of food in the amount of **\$50.00**.

The evidence of the landlord's agent was they seek to have \$20.00 per month returned because the asking rent was increased when the landlord discover the tenant had an animal.

Prior to the tenancy commencing the parties has the right to negotiate rent based on circumstances that impact the tenancy. In this case, the tenant agreed to pay the amount of \$570.00 for rent, in the return for the right to possess the rental unit. This was not a rent increase after the tenancy commenced. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, this portion of the tenant's claim is dismissed.

I find that the tenant has established a total monetary claim of **\$124.92** comprised of the above described amounts. I grant the tenant a formal order under section 67 for the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The tenancy will end on the corrected effective vacancy date, on the 2 Month Notice to End Tenancy for Landlord's Use of Property, which is July 31, 2013.

I order the landlord to comply with section 27 of the Act, and provide services that were agreed upon and that are essential to the living accommodation.

The tenant is granted a monetary order in the above amount.

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: June 19, 2013

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Residential Tenancy Branch

