



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      CNR, MNR, MNDC, OPR, FF

### Introduction

This is an application by the tenant to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. In addition, the tenant is also seeking a monetary order for compensation against the landlord, an order to force the landlord to comply with the Act, an order to force the landlord to make emergency repairs, an order to force the landlord to provide services and facilities, an order to suspend the landlord's right to access the rental unit and a monetary order for reimbursement for the cost of the application.

This is also a cross application by the landlord seeking to terminate the tenancy based on a Ten Day Notice to End Tenancy for Unpaid Rent, a monetary order for rental arrears owed for August and September 2013, an order to compel the tenant to pay the security deposit and an order for reimbursement for the cost of the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### Issues(s) to be Decided, Landlord's Application

- Is the landlord entitled to monetary compensation for rental arrears?
- Is the landlord entitled to an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?
- Should the tenant be ordered to pay the security deposit?

### Issues(s) to be Decided, Tenant's Application

- Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?
- Is the tenant entitled to monetary compensation for costs of repainting?
- Is the tenant entitled to a rent abatement for services and facilities not supplied?
- Should the landlord be ordered to comply with the Act or tenancy agreement?
- Should the landlord be ordered to complete repairs?

## **Background and Evidence**

### **Landlord's Application**

This tenancy began on August 1, 2013. Before moving upstairs, the tenants had previously resided in the lower unit of the same building. The rent is set at \$1,200.00 per month.

A security deposit of \$600.00 was supposed to be paid, but has not been paid.

The landlord testified that the tenants failed to pay rent owed for the month of August 2013 and for the month of September 2013. The landlord testified that the tenants have now accrued a debt of \$2,400.00. The landlord is seeking compensation for the \$2,400.00 in overdue rent and also seeking an order that the tenant pay the required security deposit of \$600.00.

The landlord testified that, when the tenants failed to pay rent for August, the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord seeks an Order of Possession based on this Notice.

The landlord testified that the 10-Day Notice was served on the tenant on August 9, 2013 and the tenant has not paid these arrears. A copy of the Ten Day Notice to End Tenancy for Unpaid Rent is in evidence. The Notice is signed by the landlord. However, there is no date beside the signature on the Notice form.

The tenant did not dispute the fact that the rent and the security deposit were not paid. The tenant testified that they withheld the rent because the landlord did not address a serious problem with the gas stove located in the lower unit, that they had previously occupied, and the tenants' position is that this is placing the tenants in potential danger, even though they now reside in the upper suite.

The tenant testified that they were advised by Residential Tenancy Branch staff to withhold their rent.

In regard to the unpaid security deposit, the tenant testified that they felt that the deposit did not have to be paid because the landlord had extinguished the right to collect a security deposit under the Act, based on the fact that the landlord failed to do a move in condition inspection report.

The tenant is requesting that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled.

## **Background and Evidence**

### **Tenant's Application**

### Painting Costs

The tenant testified that the landlord had verbally committed to paying for painting of the unit and \$247.00 has already been spent by the tenant for repainting the living room on this basis.

The tenant testified that the landlord has refused to compensate the tenant for the cost and has refused to permit the tenants to finish painting the unit. The tenants are claiming the \$247.00 already spent and seek an order to force the landlord to fund the repainting as promised.

The landlord testified that he had never promised to fund re-painting of the rental unit.

### Orders To Comply With the Act or Agreement

The tenant testified that the faulty propane stove connection has placed them in danger and they seek an order to force the landlord to comply with the Act. According to the tenants, they consulted a gas inspector and were told that the landlord needed to "cap off" the gas line to the faulty stove in the suite below.

The landlord argued that the lower stove poses no danger because it is not being used as the lower suite is now vacant.

The tenant testified that they had also complained to the landlord about a problem with spiders in the suite, but the landlord has also neglected to deal with this problem. The tenants seek an order to force the landlord to comply with the Act by fumigating the premises to rid the suite of spiders.

The landlord testified that the tenants contributed to the vermin problem by leaving their doors open, allowing entry of insects.

### Tenancy Agreement Terms

The tenant stated that they were never provided with a copy of their lease as required under the Act.

The landlord disputed this allegation but stated that he is willing to give the tenant another copy of their lease.

The tenant testified that their tenancy included access to laundry, which implied that the tenant was entitled to use a working washer and dryer. The tenant testified that the current laundry facilities are not functional nor accessible. The tenants are seeking an order granting them unimpeded access to working laundry facilities.

The landlord testified that the tenant has always had access to working machines and have never been locked out.

The tenants testified that the tenancy agreement did not contain a non-smoking clause when they signed it. The tenant is alleging that the landlord added a term prohibiting smoking after they had already signed and initialed the document pages. The tenant seeks an order to establish that the tenancy agreement did not prohibit smoking.

The landlord testified that the tenancy agreement was not altered after it was signed. The landlord pointed out that, at the bottom of the first page of the tenancy agreement, there is a handwritten sentence that states, "*No smoking in and around the house*", and there are three initials at the bottom of that page.

### **Analysis Notice to End Tenancy**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

Section 46(6) of the Act provides that, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after a written demand for payment has been issued, then the landlord may treat the unpaid utility charges as unpaid rent and may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

In this instance I find that the landlord has established that the tenant does owe money for rent and the security deposit and the landlord did issue a 10-Day Notice to End Tenancy for Unpaid Rent.

However, Section 52 Of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

However, I find that the 10-Day Notice to End Tenancy for Unpaid Rent issue by the landlord is not compliant with the Act as the landlord failed to put the date next to the signature. Therefore, I find that this Notice will not suffice to end the tenancy as it cannot be enforced.

That being said, I do find that the tenant is not entitled under the Act to withhold rent. I find as a fact that the tenant did not pay the rent for August and September 2013 and that the landlord is entitled to be paid \$2,400.00 by the tenant..

In regard to payment of the security deposit, I reject the tenant's argument that the security deposit did not have to be paid based on the landlord having extinguished the right to collect a security deposit under the Act. I find that, although a landlord may possibly extinguish the landlord's right to claim damages against a security deposit by not complying with the act with respect to conducting a proper move-in and move-out condition inspections, there is nothing in the Act that exempts a *tenant* from paying the security deposit.

I find that, under section 47(1)(a) a landlord has a right to issue a One Month Notice to End Tenancy for Cause when a tenant has refused to pay the security deposit.

### **Analysis Tenant's Claims**

In regard to the tenant's claim for the cost of painting, Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
  - (i) are required or prohibited under this Act, or
  - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

I find that the issue of whether or not there was an agreement that re-painting for esthetic reasons must be paid for by the landlord, would need to be a clear term in the written tenancy agreement, as it is not a requirement under the Act.

Although there is nothing in the written tenancy agreement stating that the parties agreed that the landlord would reimburse the tenant for repainting, the tenant has provided verbal testimony, albeit disputed by the landlord, that an oral agreement was made that the tenant would be reimbursed for painting, that was not documented in the tenancy agreement.

According to the Act, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

***“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;***

Although oral terms may be enforceable, I find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) **the term is not expressed in a manner that clearly communicates the rights and obligations under it.** (My emphasis)

I find that, when both parties agree about the contents of a verbal term, it can be enforced. On the other hand, when the allegation of a verbal term is disputed by one of the parties, as in this case, I must find that, pursuant to section 6(c) of the Act, that the term is not sufficiently clear and is therefore not enforceable.

#### Orders To Comply With the Act or Agreement

With respect to the tenant's concerns about the propane stove, I find that section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Accordingly, I find it necessary to order that the landlord have the stove and gas connection inspected and provide the tenant with an official report from a qualified expert stating that there is no danger or confirming it has been disconnected.

With respect to the issue of vermin, such as spiders, I find that this responsibility falls to the landlord to have the unit inspected by a pest-control expert and that the landlord must follow the recommendations of the extermination contractor.

### Tenancy Agreement Terms

I find that the tenant is entitled to receive a copy of their lease as required under the Act and I find that the landlord has made a commitment to deliver a copy of the tenancy agreement to the tenant forthwith.

With respect to the access to the laundry, I find it likely on a balance of probabilities that the tenancy included access to laundry, as the machines were present when the tenant agreed to the tenancy. I find that there is an implied term that the existing laundry machines would be accessible and functional.

Accordingly, I order that the landlord ensure that the tenant is given adequate access to working laundry facilities as part of this tenancy. I find that the tenant is also entitled to be compensated for the restricted access to the laundry facilities for several weeks and is entitled to be compensated \$80.00 rent abatement for that period, due to restricted access to laundry.

With respect to the "no smoking" clause in the tenancy agreement, I find that the sentence relating to smoking was a handwritten notation located in the lower margin of the first page of the tenancy agreement. I note that the first page of the agreement, as expected, contains the names and addresses of the parties of the agreement. I find that a term dealing with restrictions on smoking would normally have been contained in an addendum to the agreement, not inserted in the margin on the introduction page. I find that the irregular placement of the clause appears to support the tenant's allegation that it was not present in the agreement that the tenant had originally signed.

Given the above, I find that this tenancy agreement does not include a valid or enforceable non-smoking clause.

Based on the evidence before me, I hereby order that the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled and of no force nor effect.

I find that the landlord is entitled to compensation of \$2,400.00 for rental arrears.

I find that the tenant is entitled to \$80.00 for restricted laundry access. The tenant's monetary claim to be reimbursed for the cost of painting is dismissed.

In setting off the two monetary amounts granted to the landlord and tenant, I find that, after subtracting the \$80.00 awarded to the tenant, the landlord is entitled to the

remainder of \$2,320.00. I hereby issue a Monetary Order in favour of the landlord in the amount of \$2,320.00. This order must be served on the tenant and may be enforced through Small Claims Court.

I find that this tenancy agreement does include access to working laundry machines and the landlord is hereby ordered to ensure that the tenant has laundry facilities. I further find that this tenancy agreement does not include a valid or enforceable non-smoking clause.

I hereby order the landlord to engage professionals to inspect and rectify problems found with the propane stove and its connection, as well as the alleged spider infestation, and to provide the tenant with documentation proving that these matters are resolved.

Each party is responsible to pay their own costs of the applications.

### Conclusion

Both parties are partially successful in the applications. The landlord and tenant are granted monetary compensation which was set off against each other, and the Ten Day Notice to End Tenancy for Unpaid Rent is cancelled. The landlord was also ordered to provide laundry facilities and engage professionals for repairs and extermination.

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: September 16, 2013

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Residential Tenancy Branch