



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant both attended, each gave affirmed testimony, and evidentiary material was provided by both parties. There was a discrepancy with respect to what evidence was actually served on the tenant, and what evidence was actually exchanged by the parties in accordance with the Residential Tenancy Branch Rules of Procedure, however the only evidence considered in this Decision are documents that the parties agreed had been exchanged.

The parties were given the opportunity to cross examine each other on the testimony and evidentiary material referred to in the hearing, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established that a notice to end tenancy for unpaid rent or utilities ought to be cancelled?
- Has the tenant established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?
- Has the tenant established that the rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The tenant testified that this tenancy began in January, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are currently no rental arrears.

The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 5, 2014 for unpaid rent for the month of January, 2014, which he found posted to the door of the rental unit. The tenant paid rent in full for the month of January on January 8, 2014, and has also paid February's rent. Both payments were made in cash, and the landlord issued receipts. Neither of the receipts indicated that the rent was being collected "For Use and Occupancy Only" nor any other similar writing.

The tenant resides in the basement suite of the building, and the deck above his window was falling down. The tenant does such work for a living and he told the landlord it needed repairs, but the landlord did not do the repair. The tenant propped up the deck by building 2 X 6 footings and installing posts. The tenant claims \$200.00 for that repair.

Also, there is a leak in the building that has caused mould to build up. The landlord had some patch work done to the plumbing but leaks are continuing. The tenant claims \$240.00, being \$20.00 per month for 12 months for monitoring and taking care of leaks, or to reduce rent.

The tenant further testified that a previous hearing was conducted before the Residential Tenancy Branch which resulted in an order that the landlord return a ladder to the tenant immediately. The landlord didn't return it until 3 weeks later, which resulted in a loss of work for the tenant for about 3 months, and the tenant claims \$600.00 in loss of revenue.

The tenant claims \$1,040.00 as against the landlord, and requests an order that the landlord make repairs to the deck and leaks, an order that the landlord comply with the *Act*, and for an order cancelling the notice to end tenancy.

The landlord testified that the Residential Tenancy Branch advised that after the notice to end tenancy was issued, the landlord should still collect rent if the tenant paid, so the landlord did so. The tenant kept paying rent in cash even though the landlord asked for cheques. The landlord attended all rental units on the 1<sup>st</sup> day of each month to collect rent, but on January 5, 2014 the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because rent and utilities remained outstanding. The tenant paid rent for January and February, 2014 but has not yet paid the utilities. The notice to end tenancy included a statement that the tenant had failed to pay utilities in the amount of \$203.14, but the landlord did not make any other requests for utilities in writing. The landlord read the specific wording on the notice during the hearing, which states: You have failed to pay utilities in the amount of \$203.14 following written demand on 31 Dec 2013.

The landlord testified that the tenant had asked at the commencement of the tenancy if he could make some minor upgrades, and the landlord agreed, but at no time did the landlord authorize any of the repairs the tenant claims. The tenant has a small space in the basement, and the landlord attended the unit in the summer of 2013 and there was no mould. A plumber was hired to make a repair previously. Further, the deck is not part of the tenant's rental and his rental unit is not affected by deck. The deck is fenced off and is not used to access the rental unit.

With respect to the tenant's claim for loss of revenue or the cost of 2 ladders, the landlord testified that the previous owner of the property left numerous items which included ladders. The landlord denies that the tenant should be paid \$600.00.

### Analysis

Firstly, with respect to the notice to end tenancy, the *Residential Tenancy Act* states that if a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant pays the rent within that 5 day period, the notice has no effect. In this case, the parties agree that the rent was paid within that 5 day period.

The landlord testified that the notice to end tenancy also required the tenant to pay utilities in the amount of \$203.14. The *Act* states that a landlord may treat unpaid utilities as unpaid rent (i.e. the landlord can issue the notice to end tenancy), but not until 30 days after the landlord has given the tenant a written demand for the payment of such utilities. The landlord testified that he did not do so on this occasion.

Therefore, I find that the notice to end tenancy cannot be upheld; it is of no effect with respect to the rent that was due at the time of its issuance, and the landlord did not make a written demand for the utilities at least 30 days prior to its issuance.

With respect to the tenant's claims for a monetary order, I have no evidence before me of what earnings the tenant may have lost, or of the cost of ladders, or of any mould in the rental unit. I have no evidence of the landlord authorizing the repairs the tenant claims to have made. All of the tenant's testimony with respect to those items is disputed by the landlord and corroborating evidence has not been provided by the tenant. The *Act* also specifies that a tenant may complete emergency repairs, limited to major leaks in the roof or pipes, heating, locks, and electrical, and must provide receipts to the landlord for such work, and must allow the landlord to take over such repairs at any time. I cannot find that the work done by the tenant falls within "emergency repairs," and no receipts have been provided. Whether or not the tenant made repairs to the deck is not the issue; the issue is whether or not the landlord authorized the tenant to do such repairs, whether or not the repairs were urgent, and whether or not failing to make such repairs has an effect on the rental unit. I find that the tenant has failed to establish any of those elements. Therefore, the tenant's application for a monetary order cannot succeed.

Further, I find no evidence of the repairs the tenant claims that the landlord needs to make in order to comply with the *Residential Tenancy Act*. A landlord is required to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant, and I find that the tenant has failed to establish that the landlord has not complied. Therefore, the tenant's applications for an order reducing rent for repairs, services or facilities agreed upon but not provided, and for an order that the landlord comply with the *Act*, regulation or tenancy agreement are dismissed.

Since the tenant has been partially successful with the application, the tenant is entitled to recover of the \$50.00 filing fee for the cost of the application. I order that the tenant be permitted to reduce a future month's rent by that amount, or otherwise recover the amount, and I provide herewith a monetary order.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 5, 2014 is hereby cancelled.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00. This amount may be deducted from a future month's rent or otherwise recovered.

The balance of the tenant's application is hereby dismissed 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: February 27, 2014

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Residential Tenancy Branch

