



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, 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 *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the tenant was accompanied by an observer who did not testify and did not take part in the proceedings, with the consent of the landlord. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of a post office box rental and damages for failure to make repairs to the rental unit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on July 15, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$400.00 per month is payable on the 15<sup>th</sup> day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from the tenant, and no written tenancy agreement exists.

The tenant further testified that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in October last year which stated that the tenant owed \$150.00. The tenant disputed the notice and the landlord cancelled the

notice because he forgot about the hearing and didn't have his case prepared. At that time, the landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause to convert the rental unit into an office and was told by an Arbitrator that it was difficult to do due to the required permits.

The landlord has served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities claiming the tenant owes \$1,050.00, and the tenant does not know where that amount comes from. She stated that the parties agreed on the amount of rent and the tenant has provided receipts showing that \$400.00 per month is being paid.

The tenant further testified that a hearing last month resulted in an order that the landlord make repairs to the rental unit by the end of January, 2015 and the landlord has not made any attempt. When the tenant first moved in, the landlord promised another unit but it was never provided. The tenant has not totally unpacked because she does not know where she is moving to. Then the landlord offered another unit for \$800.00 per month but the tenant refused.

The tenant also had to rent a post office box and if the tenant had a written tenancy agreement, the rental would be free. The tenant has provided a receipt in the amount of \$173.25 which she claims from the landlord.

The tenant has suffered stress from the tenancy and testified that the fuel tank ran out for the second time and the landlord was ordered to keep it full. Four times in a month the furnace went out. The tenant called the landlord but received no response and called a heating company herself. They contacted the landlord and the landlord responded to them but not to the tenant. The tenant claims damages for stress as a result of the landlord's failure to comply with the *Act*, however the application does not indicate a dollar amount claimed.

The landlord testified that the tenant is incorrect with respect to the amount of monthly rent payable. The only agreement or discussion with respect to rent was that the landlord required \$300.00 for the first two weeks of the tenancy, being up to the end of July, 2014. Rent is therefore \$600.00 per month, and the tenant decided to start paying \$400.00 per month. The tenant had called the landlord needing a place to stay urgently due to an abusive situation that involved police. The landlord has 14 rental properties and allowed the tenant to stay in one of his manufactured homes. The stay was to be temporary as the landlord had another unit becoming vacant, but as it turned out, it didn't become vacant. The landlord offered the tenant another unit for \$800.00 per month but the tenant refused it.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in October, 2014 which was disputed by the tenant. A hearing was scheduled but the landlord did not have evidence submitted in time, and felt that crucial evidence would not be considered, so the landlord withdrew the notice.

The landlord further testified that the rental amount is and always has been \$600.00 per month as evidenced by the receipt the tenant was given on August 18, 2014, a copy of which has been provided. The receipt is for a total of \$400.00 and states that \$50.00 of that is for the unpaid rent for July and \$350.00 towards August. The tenant is currently in arrears of rent the sum of \$1,050.00.

The landlord's spouse served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 19, 2014 and the landlord was present and witnessed it. A copy of the notice has been provided and it is dated December 19, 2014 and contains an expected date of vacancy of January 2, 2015 for unpaid rent in the amount of \$1,050.00 that was due on December 15, 2014.

The landlord agrees that the tenant would not have had to pay for a post office box if the parties had a written tenancy agreement, however if the landlord had prepared one for \$600.00 per month, the tenant would not have signed it in any event.

The landlord also submits that the tenant is not credible and has provided letters from others to corroborate that based on the writers' experiences with the tenant.

### Analysis

Firstly, with respect to the tenant's application for monetary compensation, I have read the Decision from the hearing in December, 2014 wherein the landlord was ordered to make repairs to the rental unit by the end of January, 2015 and if the landlord fails to do so, the tenant would be at liberty to apply for further relief. It is not yet the end of January, 2015 and there is no evidence to satisfy me that the landlord won't comply. I find the tenant's application to be premature and without merit.

With respect to the post office box, the landlord agrees that had he provided a tenancy agreement, the fee would not have to be paid, but he also testified that had he prepared a tenancy agreement for \$600.00 per month, the tenant wouldn't have signed it. However, the *Act* requires a landlord to complete a tenancy agreement and states that a party is entitled to compensation for any loss that results from the other party's failure to comply with the *Act*. The tenant has provided a receipt for \$173.25 and I find that the tenant is entitled to be reimbursed.

The tenant has provided receipts showing that she paid \$400.00 per month, however, I am not satisfied that they were full payments as evidenced by the July 23 receipt for \$250.00 and the August 18, 2014 receipt showing that \$50.00 was applied to July and \$350.00 toward August. I accept the testimony of the landlord that there was no other discussion about the amount of rent payable and that the tenant was not expected to stay in that rental unit long. The tenant testified that when she first moved in, the landlord promised another unit but it was never provided and does not know where she is moving to. Then the landlord offered another unit for \$800.00 per month but the tenant refused. In the circumstances, I am not satisfied that the parties had an

agreement for \$400.00 per month and nothing in the *Act* permits a tenant to set the amount of rent payable.

I have reviewed the notice to end the tenancy and I find that it is in the approved form and contains information required by the *Act*. The tenant's application to cancel it is hereby dismissed.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued December 19, 2014 is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$223.25

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: January 22, 2015

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Residential Tenancy Branch

