



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, OPB, MNR, MNDC, FF  
CNR, ERP, RP, MNDC, OLC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for cause and for breach of an agreement; for a monetary order 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 tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, 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.

During the course of the hearing, the tenant withdrew the application for an order that the landlord make emergency repairs for health or safety reasons.

### Issues to be Decided

The issues remaining to be decided are:

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Is the landlord entitled under the *Act* to an Order of Possession for cause?
- Is the landlord entitled under the *Act* to an Order of Possession for breach of an agreement?
- Should the notice to end tenancy for unpaid rent or utilities be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for parking fees and late rent fees?
- 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 aggravated damages for lack of repairs?
- 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 landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on May 1, 2014 and expires on April 30, 2015. The tenant still resides in the rental unit. Rent in the amount of \$1,120.00 per month is payable in advance on the 1<sup>st</sup> day of each month in addition to parking fees of \$90.00 per month for 2 stalls. On April 4, 2014 the landlord collected a security deposit from the tenant in the amount of \$560.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided which contains a clause for late rent payments of \$20.00.

The landlord's agent further testified that the tenant is in arrears of rent \$1,120.00, having not paid any rent for January, 2015 as well as \$90.00 for parking. The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 2, 2015. A copy of the notice has been provided and it is dated January 2, 2015 and contains an effective date of vacancy of January 15, 2015 for unpaid rent in the amount of \$1,120.00 that was due January 1, 2015. The landlord's agent testified that the tenant has not paid any rent since the issuance of the notice.

The landlord's agent also testified that the landlord issued a 1 Month Notice to End Tenancy for Cause on January 11, 2015 which contains an effective date of vacancy of February 28, 2015. A copy of that notice has been provided and shows that the reasons for issuing the notice are:

- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent testified that the tenant distributed a notice to almost all other tenants in the building inviting everyone to a public meeting in the lobby on January 11, 2015. A copy of the notice has been provided. It is headed, "Invitation to a meeting in relation to sudden flow of hot water from showers," and states, "... There will be a meeting in the lobby of this building on this coming Sunday, January 11, 2015, at 7:00 pm to talk about our options to make the landlord fix the problem and to receive compensation from the landlord in relation to this matter." The name and phone number of the tenant and another occupant are also contained in the notice. Other occupants contacted the resident manager who notified the landlord's office. The landlord's agent wrote a letter to both tenants named on the notice stating public meetings on the rental property is prohibited and that other tenants had complained. The letter also states that any concerns regarding the tenancy should be made in writing to the landlord, and that if the conduct continues, the landlord would issue a notice to end the tenancy. A copy of the letter has been provided and it is dated January 9, 2015. The other tenant was surprised that his name and phone number were quoted on the notice and told the landlord's agents that he did not give his permission.

On January 11, 2015 the tenant held the public meeting. The resident manager told the tenants they weren't allowed to conduct the meeting, and served the 1 Month Notice to End Tenancy for Cause upon the tenant.

Since then, the tenant has given another memo to the tenants last weekend. The landlord has not provided a copy because it was late evidence, however the landlord's agent testified that the notice states that an application will be made to the Supreme Court and invites others to join the law suit.

The landlord's agent also testified that the tenancy agreement contains a term that the tenant will not disturb or harass other tenants, and other tenants have complained that they don't want flyers and notices attached or slid under their doors or delivered. Also,

a term in the tenancy agreement states that no public meetings or assemblies shall be held on the premises.

The landlord has been served with the Tenant's Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy, but not the 1 Month Notice.

The landlord claims an Order of Possession, a monetary order for the unpaid rent, parking fees, late fee and recovery of the filing fee.

The landlord's witness testified that she is the resident manager of the rental complex and also collects rent from tenants. No rent has been paid by the tenant since the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which the witness served on January 2, 2015 by posting it to the door of the rental unit.

The witness also testified that other tenants had received a notice from the tenant about a meeting and asked the witness what it was about. The witness didn't get the invitation and had no idea about it. The witness delivered a warning letter to both tenants whose names were on the notice on January 9, 2015. The other tenant, whose name and phone number were on the notice, contacted the witness stating that he had no knowledge that his name was on the notice, and that he only agreed to attend the meeting. He was very upset at being mislead and having his tenancy put at risk for no reason.

The witness attended the lobby to see if the meeting took place, which it did, and the tenant was subsequently served with a 1 Month Notice to End Tenancy for Cause.

The tenant testified that he contacted the landlord's agents about the heat in the rental unit and it was getting colder by the day. At the end of December, 2014 the tenant talked to the resident manager about it who said nothing would be done because it cost money. The tenant replied that it's an emergency repair and the landlord was responsible. Photographs of the incomplete or damaged baseboard heaters have been provided. The tenant told the resident manager that he was withholding rent, which was his right and the tenant quoted from something referring to Section 33 of the *Residential Tenancy Act*. The resident manager told the tenant to move some belongings away from the heaters to allow heat to go around the apartment more efficiently, but the tenant responded that wasn't the issue. Radiation of heat was the issue, and since the plumber has been there and fixed it, there are no problems. The tenant did not pay for the repair and did not call the plumber.

The tenant further testified that the resident manager called on January 2, 2015 stating that a notice to end the tenancy would be on the door of the rental unit and if the tenant

paid the rent, the notice could be torn up. The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that day. After the tenant refused to pay the rent, a plumber was called to the rental unit on January 6, 2015 and the heat was fixed on January 14, 2015. The tenant states that the *Act* permits the tenant to withhold rent if emergency repairs are required and not made by the landlord.

The tenant received the 1 Month Notice to End Tenancy for Cause by registered mail with the Landlord's Application for Dispute Resolution on January 16, 2015. The tenant also received a second copy of the 10 Day Notice on January 11, 2015 and did not receive any warning letter.

The tenant also testified that the stove didn't work properly and the outside windows haven't been cleaned for a long time which was acknowledged by the resident manager. The stove was fixed after the tenant withheld rent, but the windows have not yet been cleaned. The tenant's application for an order that the landlord make repairs to the unit, site or property refers to the windows. The tenant has not requested that the landlord make any repairs in writing, but verbally demanded them to the resident manager.

With respect to the tenant's application for an order that the landlord make emergency repairs for health or safety reasons referred to the heat, which has now been fixed, and the tenant withdraws that part of the claim.

With respect to the tenant's monetary claim, the tenant has provided details of the dispute setting out the amounts sought. The tenant claims compensation for the landlord's failure to make repairs causing the tenant to suffer loss of use and enjoyment of the rental unit, and has calculated 20% of rent for the months of October through December, 2014, or \$672.00 for no heat; 10% of the monthly rent from the beginning of the tenancy for a faulty electrical system, or \$896.00; and 5% of the monthly rent for the 8 months of the tenancy for dirty windows, or \$448.00, for a total of \$2,016.00.

### Analysis

Firstly, with respect to the 1 Month Notice to End Tenancy for Cause, I accept the testimony of the tenant that it was received with the Landlord's Application for Dispute Resolution and that he received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities twice. I don't find it hard to believe that the landlord's agents mixed up the two notices. The tenant testified that he received it by registered mail on January 16, 2015 and I accept that. I also accept that the tenant's application for dispute resolution doesn't dispute that notice because it had not yet been received by the tenant.

With respect to the tenant's claim that a tenant has a right under the *Act* to withhold rent for emergency repairs not made by the landlord, the *Act* states that a tenant may make emergency repairs and if a landlord does not reimburse the tenant, the tenant may deduct the amount from rent. It does not permit a tenant to withhold rent. The *Act* also states that a tenant must pay rent even if the landlord is not complying with the *Act* or the tenancy agreement. Having found that the tenant had no legal authority to withhold rent, the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed.

I have reviewed the notice and find that it is in the correct form and it contains information required by the *Act*. I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. I further find that the landlord is owed parking fees of \$90.00, a late fee of \$20.00 and rent in the amount of \$1,120.00.

The *Act* requires a landlord to maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. It also states that a party may claim compensation for damage or loss that results from the other party's failure to comply with the *Act*, the regulations or the tenancy agreement. In order to be successful in such a claim, the onus is on the tenant, in this case, to establish what damages were suffered respecting the lack of repairs and what the tenant did to minimize the damage or loss suffered. Although the tenant didn't put his requests in writing for repairs required, he testified that he told the resident manager about it and demanded repairs. There is no doubt that the heat didn't work, and the tenant claims that it didn't work for 3 months. I find that the tenant's claim for \$672.00 is justified but the tenant is not entitled to any further claim for the electrical system. With respect to the dirty windows, I am not satisfied that the tenant has suffered any damage or loss. There is no evidence before me that the tenant couldn't see through them or whether or not they blocked out light or any other loss.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement and the application for an order that the landlord make repairs to the unit, site or property.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

I order that the monetary amounts be set off from one another, and I order the tenant to pay to the landlord the difference in the amount of \$558.00.

I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for unpaid rent is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$558.00.

These orders are final and binding and may be enforced.

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 28, 2015

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Residential Tenancy Branch

