



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, ERP, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make emergency repairs; and a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenant's claim for emergency repairs or compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for compensation and emergency repairs. I grant the tenant leave to re-apply for his other claims.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost

of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began in June 2014 as a month to month tenancy for a monthly rent of \$1,350.00 due on the 1<sup>st</sup> of each month with a security deposit of \$400.00 paid.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 10, 2015 with an effective vacancy date of February 20, 2015 because of unpaid rent in the amount of \$1,350.00 due on February 1, 2015.

The parties agree that toward the end of January 2015 the tenant identified to the landlord that there was a serious mould problem in the rental unit and had included a report that the tenant commissioned providing confirmation of the existence and types of mould present.

The tenant submits that all of his belongings are completely ruined by the mould and that he cannot move with any of belongings to a new location but that the landlord had agreed to provide him with replacement items if he provided a list to him. The tenant submits that he had not paid rent for the month of February 2015 because he knew he would need the money to make emergency repairs as the landlord had left the country.

The tenant has confirmed that as of the date of the hearing he has not paid for any emergency repairs and that he has also not paid any rent for the month of March 2015.

### Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

The 2<sup>nd</sup> page of the 10 Day Notice to End Tenancy for Unpaid Rent states that tenants may dispute the notice for specific reasons such as:

- They have proof the rent was paid;
- They have an order from an Arbitrator giving them permission to keep all or part of the rent; or
- They held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.

Section 33(1) of the *Act* defines emergency repairs as repairs that are

- (a) Urgent,
- (b) Necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) Made for the purpose of repairing
  - (i) Major leaks in pipes or the roof,
  - (ii) Damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) The primary heating system,
  - (iv) Damaged or defective locks that give access to a rental unit,
  - (v) The electrical systems, or
  - (vi) In prescribed circumstances, a rental unit or residential property.

Section 33(3) states that a tenant may have emergency repairs made only when they are needed; the tenant has made at least 2 attempts to telephone the person identified by the landlord as the person to contact for emergency repairs; and following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(5) says a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) states that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Despite the tenant's testimony that he kept his rent money to complete emergency repairs, I find that the tenant did not complete any emergency repairs. I also find that even if the tenant had made some emergency repairs he still did not have authority under Section 33 to withhold any rent as he had not complied with all of the requirements outlined in Section 33.

As such, I find the 10 Day Notice to End Tenancy for Unpaid Rent is valid and enforceable and the tenant must vacate the rental unit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: March 10, 2015

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Residential Tenancy Branch

