



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, MNR, MNDC, O, ERP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- another remedy or compensation under *the Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. A representative attended on behalf of the landlord. A letter had been submitted by the landlord on May 28, 2015 indicating that this representative would speak on the landlord's behalf at the hearing. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy on May 14, 2015 posted on his door. The landlord testified that he received both the tenant's initial application as well as a subsequent evidence package by registered mail on April 23, 2015 and May 15, 2015. The tenant confirmed receipt of the landlord's evidence package on June 3, 2015.

### Preliminary Issue: Adjournment Application by the Landlord's representative

Approximately forty five minutes of the hearing had been conducted, the landlord's representative sought to adjourn this matter. He submitted that the landlord was required to attend to provide details that he could not with respect to the tenancy and this tenant's circumstances. The tenant opposed the application suggesting the delay was to the benefit of the landlord and would affect him substantially.

With respect to the application for an adjournment, Rule 6 of the Dispute Resolution Rules of Procedure states that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". In this case, the landlord made no application for an adjournment of this matter prior to the hearing itself. The landlord appointed an agent to appear on his behalf. Further, the landlord's representative did not indicate at the outset of this hearing that he was unable to participate fully or that he sought an adjournment for the landlord to attend.

The criteria provided for granting an adjournment, under Rule 6.4 of the Rules of Procedure are;

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The landlord's representative submitted that, based on the tenant's evidence, the landlord would be best equipped to respond to the application. However, I note that the tenant's evidentiary materials were thorough (49 pages) with an explanatory note on the application itself. I also note that the landlord submitted materials in response prior to the hearing on May 28, 2015. The landlord's evidence package and the landlord's representative's testimony have been taken into careful consideration in making a determination in this matter. I determined that, in these circumstances, a fair and efficient dispute resolution hearing is best accomplished by proceeding with the tenant's application.

I find that the landlord and his representative have been neglectful by failing to seek an adjournment if required prior to the date of this hearing. The landlord was aware of this scheduled hearing from April 23, 2015 well prior to the date of this hearing and his letter provided to the Residential Tenancy Branch regarding his replacement for the hearing was dated May 22, 2015. That letter did not indicate that an adjournment was necessary.

I do not find that the landlord's representative is unable to provide evidence in response to the tenant. Based on his submissions, I find that the representative was sufficiently briefed to address this matter and I am concerned with respect to any delay. I find that delay of this matter might result in undue prejudice or hardship to the tenant in the circumstances. This application by the tenant may effect whether his tenancy continues.

There are significant consequences affecting the tenants' right to a fair hearing with this adjournment and therefore to the dispute resolution process. I declined to adjourn the hearing. The landlord's (late) application to adjourn the hearing was dismissed. The hearing continued.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the tenant entitled to a monetary award for emergency repairs and/or an order to have the landlord undertake emergency repairs?

Is the tenant entitled to any other remedy under the *Act*?

#### Background and Evidence

This month to month tenancy began on October 1, 2014. The rental amount of \$700.00 is payable on the first of each month. The tenant testified that the payment is directly deposited by a government agency. The landlord's representative testified that he continues to hold a security deposit in the amount of \$350.00 the tenant paid on October 1, 2014.

The landlord's representative testified that the tenant did not pay rent of \$1500.00 due on May 1, 2015. The tenant testified that he did not reside in the rental unit for most of the month of May. The landlord's representative confirmed that the tenant did not reside in the rental unit for most of the month of May. Both parties agree that, as a result of a police incident (a break-in) in April 2015, the tenant's door was broken and the lock was not working. Both parties agreed that the tenant asked for the door to be repaired by the landlord and the landlord declined to do so. The landlord's representative testified that the tenant was responsible for his home being broken into and therefore responsible to pay the cost to repair the door. The tenant testified that he was a victim of a crime. The tenant testified that he was willing to undertake having the door repaired on his own if the landlord's representative would provide a portion of his security deposit, which he would forfeit at the end of the tenancy, to make repairs. He testified that he resides with his daughter and is on a very fixed income. He testified that he simply could not pay the cost of the repair out of his pocket.

The tenant testified that he was not responsible for withholding his May 2015 rent from the landlord. He testified that his living situation was declared unsafe for himself and his child by the by a third party and, as a result, they were required to reside in a hotel for the majority of the month of May. When the door was minimally repaired and the unit deemed safe by the authorities, they returned to the rental unit. The landlord's representative confirmed that the tenant has paid rent for June 2015.

The tenant submitted substantial documentary evidence. Including in his evidence package was; letters supplied by both government and non-government support workers to indicate that the tenant was required to be temporarily relocated. More than one letter specifically addressed the safety concern as a result of the break-in, specifically that the door had not been repaired. In support of his testimony, the tenant also submitted; hotel records and receipts; a police file number and report; as well as letters from the tenant to the landlord attempting to resolve this matter.

The tenant submitted that he is on a wait list for supportive housing and he hopes to relocate soon. He testified that the rental unit he lives in now has rats, has electrical issues and he hopes that he won't have to stay there much longer. The tenant testified that he has spoken to the landlord about the rats in the suite and property but has received no response. To support his testimony regarding rats, the tenant submitted a quotation from a pest company indicating the nature of the infestation and the cost to rid the unit of rats.

In support of his testimony that there was also an electrical issue within the residence, he provided sworn testimony. He testified that the electrical and other issues are all emergency repairs that have yet to be addressed. He testified that he has returned to the rental unit because he has no other place to go currently and the door is functional.

The tenant sought to be compensated for the condition of the residence. He also sought an order that the landlord all repairs to the unit that he is obliged to do. The tenant submitted that he had little control over the withholding of May rent but submitted that it was justified in these particular circumstances.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord's representative testified that the tenant did not pay the May 2015 rent on May 1, 2015 as required by the tenancy agreement. The landlord's representative testified that the tenant did not pay the May 2015 rent after receiving the 10 Day Notice on May 17, 2015.

The landlord's representative made no application with respect to this matter and simply responded to the tenant's application.

### Analysis

The tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. Pursuant to section 26 of the *Act*,

**26** (1) 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 a right under this *Act* to deduct all or a portion of the rent.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

***(emphasis added)***

The May 2015 rent was not paid. On receipt of the 10 Day Notice to End Tenancy, the tenant did not pay the rent. However, in this very particular situation, the tenant does not pay rent to the landlord directly. His rent is paid by a third party. That third party withheld rent from the landlord and required the tenant to relocate for a period of time out of concern for the safety of his child. Pursuant to section 46(4) of the *Act*, the tenant made an application to dispute the 10 Day Notice.

There are, as noted above a tenant must pay rent regardless of any other circumstances. Pursuant to section 46(3), a tenant may deduct an amount from his rent if he has the right to under the *Act*. In this case, however, I find it unnecessary to consider whether the tenant had a right to deduct, reduce or withhold his rent. I find that the tenant did not in fact make a deduction or withhold his rent. A third party withheld the rent from the landlord for the month of May 2015. The tenant has returned to the premises and has paid June 2015 rent in accordance with his obligations as a tenant.

I find that while the landlord has not been paid rent for the month of May 2015, the amount of \$1500.00 owed to the landlord is not owed as a result of any intentional action by the tenant. In these very narrow circumstances, considering the unsafe situation and the authority of the third party to pay or not pay the landlord rent as well as the lack of – the tenant has in that decision, that the 10 Day Notice provided to the tenant should be cancelled and the tenancy continue.

With respect to the tenant's application for a monetary award, I find that the tenant is not entitled to the amount sought (\$5575.00). The tenant made thorough and well organized submissions with respect to the issues within the tenancy and the need for repairs as well as pest control services. However, the tenant's financial loss is in relation to the hotel bill that he incurred when directed by the third party to stay in the hotel instead of his rental unit. I find that this is not a cost that the landlord is required to bear: It is neither the tenant nor the landlord who created unsafe conditions in the rental unit home. I find the tenant is not entitled to recover from the landlord any cost of his hotel stay.

I find that, with respect to the tenant's testimony regarding faulty electricity and appliances, the issue is the need for repairs and the tenant has not shown a monetary or substantive loss with respect to these matters.

The landlord's representative disputed the tenant's claims that the residence has rats. However, the tenant submitted a compelling evidentiary document. A quotation form from a pest company states,  
*After a visual inspection of the household, we have discovered  
rat activity in the basement.*

The pest control person provided detailed steps to be taken including a rat trapping program and preventative screening by covering and sealing certain items to protect from the re-immersion of rats. This quote is dated May 4, 2015. The tenant testified that he has raised this issue with the landlord numerous times.

Based on the detailed testimony of the tenant and the support document in an assessment and quote from a pest company, I find that the tenant is entitled to some compensation for living with rats since at least November 2014. The tenant testified that clothes and other items within the unit have been gnawed on by rats and that the family will occasionally see rats inside and outside the rental unit. As well, the tenant testified that he has purchased rat traps at a cost of approximately \$60.00 to attempt to reduce the problem. He testified that, on one occasion, he killed a rat that came near his daughter. He testified that she was horrified and that he felt awful.

Given these circumstances, I find that a deduction of 10% of the tenant's rent, the equivalent of \$70.00 a month, should be deducted from the tenant's past rent, not including May 2015. The total for the months November 2014 through April 2015 is \$420.00. I issue a monetary order to the tenant including \$420.00 for interference with his tenancy by rats not addressed by the landlord.

On a continuing basis and only until the landlord has a professional pest control company on the tenant's premises to begin pest control treatment, the tenant's rent will be reduced by \$70.00 per month. That reduction will cease when the landlord has taken action to address the rats.

### Conclusion

I allow the tenant's application to cancel the 10 Day Notice to End Tenancy. The tenancy will continue.

I allow the tenant's application for an order to the landlord's representative for emergency repairs as follows;

I order the landlord provide an electrician and repair all identified electrical issues by July 15, 2015.

I order the landlord to arrange immediate repairs of any electrical issues that represent safety concerns within the residence immediately on receipt of this decision.

I order that the landlord provide repairs to the entrance door to the tenant's unit and repair completely any locks or damage preventing the doors from being locked when closed.

I order the landlord provide pest control services to the tenant's rental unit immediately on receipt of this decision.

I further order that the tenant reduce his rent by \$70.00 per month each month **only** until the landlord has begun to provide pest control services to the unit.

I issue a monetary order to the tenant against the landlord in the amount of \$420.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 16, 2015

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Residential Tenancy Branch

