



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – CNR, CNC, MNDC, RR, RP

For the landlords – OPR, OPC, MND, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause and amended her application to cancel a 10 Day Notice to End Tenancy for unpaid rent. The tenant also applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and for an order to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agents attended the conference call hearing and gave sworn testimony. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant stated she did not receive the landlord's hearing documents or evidence; however, as they were sent by registered mail on July 23, 2015 they are deemed to have been served five days later pursuant to s. 90(a) of the *Act*. The landlord confirmed receipt of the tenants hearing package and evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s and landlords’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application for to cancel both of the Notices to End Tenancy and the landlords’ application for an Order of Possession based on both of the Notices to End Tenancy. I will also deal with the landlords’ application for unpaid rent. The reminder of the landlords’ and tenant’s applications have not been dealt with at this hearing as they are unrelated to the main issues.

### Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the 10 Day Notice to End Tenancy for unpaid rent?
- Is the tenant entitled to an Order cancelling the One Month Notice to End Tenancy for cause?
- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on February 01, 2015 for a fixed term tenancy of one year. Rent for this unit is \$1,200.00 per month due on the 1<sup>st</sup> of each month in advance. The tenant paid a security deposit of \$600.00 on January 24, 2015.

The landlords’ agent testified that the tenant was served a One Month Notice to End Tenancy on May 31, 2015. This Notice had an effective date of July 01, 2015 and was served upon the tenant by posting it in her mailbox on May 31, 2015. The tenant confirmed she received the Notice on June 01, 2015. The Notice provided the following reasons to end the tenancy:

1) The tenant has caused extraordinary damage to the unit/site or property

2) The tenant has not done required repairs to the unit, site of property

The landlords' agent GR testified that on April 08, 2015 there was sewage back up in the unit causing sewage to flood in the crawl space and basement area. The landlords' agent called a plumber who found tampons in the sewage. This was dealt with by the landlords.

A second sewage back up occurred on June 19, 2015. A different plumber was called in and he found a number of tampons blocking the line. That plumber also found a faulty valve in the line. The landlords' agent testified that the first plumber had cleared all the tampons out of the line in April yet the tenant must have put tampons down the toilet again for the line to block in June.

The landlords' agent testified that prior to the tenant living in the unit the landlords' agent NA lived in the unit with her husband and young children. NA also had a 19 year old stepdaughter who visited NA but due to a disability did not use tampons. NA testified that she did not use tampons. NA agreed that she did operate a salon for friends and family and they were able to use the washroom when required.

The landlords' agent testified that the tenant did not do required repairs in the unit. The plumbing issues were all taken care of by the landlords; however, the tenancy agreement states that the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and must take necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant and this was not done. The landlords' agent also testified that the tenant removed two fruit trees from the yard and has not replaced them.

The tenant testified that when she moved into the unit she was pregnant and had her baby on February 12, 2015. The tenant testified that she was not able to use tampons until the end of April under advice from her doctor. The tenant referred to the letter from her doctor provided in documentary evidence. The tenant testified that her children are all boys and therefore do not use tampons. If the sewer backed up this was not the fault of the tenant.

The tenant testified that when the second back up occurred the plumber told the tenant that the flapper was stuck shut and rusted and the one tampon found there could have been there for years. The tenant testified that she does not flush her tampons down the toilet because of the

first sewage back up that occurred prior to the tenant starting to use tampons. The tenant testified that the odd tampon may drop into the toilet but as they are the Tampax brand they are meant to be flushed. As the sewage line was corrupt the tenant was careful about flushing tampons as she did not want another sewage flood.

The tenant disputed the landlords' claims concerning repairs. The tenant testified that any repairs to the plumbing are not her responsibility and the two fruit trees the landlords' agent referred to are not yet trees but merely sticks and they are still in the yard.

At this point in the hearing the tenant testified that she intends to vacate the rental unit on August 20, 2015. The parties reached an agreement concerning the tenant vacating the unit on this date. I am not therefore required to make a decision in this matter concerning the One Month Notice to End Tenancy. The agreement is as follows:

#### **AGREEMENT REACHED BETWEEN BOTH PARTIES**

The Parties did not require me to make a decision in the matter of the One Month Notice but required me to record the agreement they mutually reached.

This agreement is as follows:

- The parties agreed the tenancy will end on August 20, 2015.
- The landlord agreed that as a One Month Notice was issued to the tenant that the tenant is not required to provide further written notice to end the tenancy and therefore no further rent for September will be sought by the landlord.
- The tenant agreed to vacate the rental unit and provide vacant possession at 1.00 p.m. on August 20, 2015.

The landlord's agent testified that the tenant failed to pay all the rent for June leaving an unpaid balance of \$200.00. The tenant was served a 10 Day Notice to End Tenancy on June 20, 2015. The tenant has since failed to pay any rent for June, July or August and the landlord seeks a Monetary Order to recover the unpaid rent of \$2,600.00. The landlord seeks to amend their claim to allow for the unpaid rent for July and August. The landlord accepts that the tenant may not have been served with both pages of the 10 Day Notice.

The tenant testified that she was only served the first page of the 10 Day Notice to End Tenancy. The tenant does not dispute that she withheld the rent due to repairs not completed by the landlords and that rent is outstanding of \$2,600.00.

Analysis

As the parties have reached an agreement concerning the One Month Notice to End Tenancy and agreed the tenancy will end on August 20, 2015 I am not required to provide an analysis on the reasons given on the Notice. These reasons have therefore not been proved or disproved.

With regard to the landlords' 10 Day Notice; as the tenancy will end I am not required to deal with the landlords' application for an Order of Possession. However, I will caution the landlords that if I was making a decision on the 10 Day Notice for their application I would have to find it was not a valid document as it was not complete. If a document has two pages then both pages must be served upon the tenant. The tenant's application to cancel the 10 Day Notice to End tenancy is therefore upheld. The 10 Day Notice is hereby cancelled.

With regard to the landlords' application for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

*26. 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.*

The tenant may only withhold rent if the tenant has followed s. 33 of the *Act* with regard to emergency repairs paid for by the tenant and the tenant has deducted the cost of emergency repairs from the rent or the tenant has an Order from the Director of the Residential Tenancy Branch to deduct rent. The tenant does not have an order to deduct the rent and therefore I find the landlord has established a claim to recover unpaid rent. I have allowed the landlord to amend their application to include unpaid rent for July and August as the tenant has continued to reside in the rental unit and should know that rent is due on the 1<sup>st</sup> day of each month. Consequently, the landlords are entitled to a Monetary Order to recover the unpaid rent of \$2,600.00 pursuant to s. 67 of the *Act*.

As the landlords have been partially successful with the portion of their claim heard today, I find the landlords are entitled recover their filing fee of \$50.00 pursuant to s. 72(1) of the *Act*

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is upheld. The 10 Day Notice dated June 19, 2015 is cancelled.

Both Parties have reached an agreement during the hearing concerning possession of the rental unit and this agreement has been recorded by the Arbitrator pursuant to section 62 of the *Act*.

This agreement is in full, final and binding settlement of the landlords' and tenant's applications concerning the One Month Notice.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

The tenant's application for an Order for the landlord to make repairs to the unit, site or property is dismissed without leave to reapply as the tenancy will end on August 20, 2015.

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,650.00**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenant fails to comply with the Order.

The landlords' application for a Monetary Order for damage to the unit, site or property and for money owed or compensation for damage or loss is dismissed with 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: August 12, 2015

