



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR; CNR, LRE, AAT, LAT, AS, RR, FF

### Introduction

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

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

This hearing dealt with the tenant's application pursuant to 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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant elected to call two witnesses: AW and JR.

No issues of service were raised by either party.

### Moot Issues

The parties agree that the tenant has vacated the rental unit. On this basis, the following issues raised in the applications are now moot:

- an order of possession for unpaid rent pursuant to section 55;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70; and
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

### Amendment

The landlord asked to amend her application to include unpaid rent for October. The tenant consented to this amendment.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in spring 2015. Monthly rent of \$650.00 was due on the first. The landlord sublets space to the tenant.

The landlord testified that the tenant's son, AM, moved in with the tenant. On or about 1 September 2015, AM vacated the rental unit. The landlord testified that the tenant wanted J to live in the rental unit. The tenant testified that he emailed the landlord asking for permission for J to move in. The tenant testified that he received permission

from the landlord for J to move in. The landlord testified that J moved into the rental unit and then attempted to move her partner in as well.

The landlord testified that J's partner provided \$500.00 to J to provide as rent. The landlord testified that the money was then given from J to the tenant and then from the tenant to the landlord. The tenant testified that he received a receipt from the landlord for this payment. AM confirmed the tenant's account. The landlord testified that she returned this \$500.00 to J because the landlord did not want the partner living in the rental unit. The tenant testified that he did not give permission for this money to be returned.

On 23 September 2015, the landlord issued the first 10 Day Notice to the tenant. The 10 Day Notice set out an effective date of 1 September 2015. The first 10 Day Notice set out that the tenant had failed to pay \$500.00 of rent that was due 1 September 2015.

The tenant testified that he did not want to give the landlord cash for October's payment. The tenant testified that he acquired a money order for the purposes of paying October's rent. The tenant testified that the landlord refused to accept the money order and demanded payment in cash. AM confirmed this testimony including the specific bank from which the money order was obtained. I was not provided with a copy of the money order. The landlord denies that this attempt at payment was made. The landlord testified that the tenant has not paid rent for 1 October 2015.

The landlord admits that she did not pay rent to the property management company for October. The landlord testified that the property management company has indicated that they will not seek collection of October's rent.

On 10 October 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice set out an effective date of 19 October 2015. The 10 Day Notice set out that the tenant had failed to pay \$650.00 that was due 1 October 2015.

The landlord admitted the rental unit was not in great shape. The tenant testified to the following deficiencies in the rental unit:

- the door frame had gaps;
- the heating ducts needed to be cleaned;
- water leaked from the ceiling;
- a window was broken;
- the landlord was occupying the tenant's shared portion of the garage; and

- a wall was damaged.

Door Frame: The tenant testified that the door frame has gaps around it that his grandchildren place their hands in. The tenant testified that these are interior doors.

Heating Ducts: The tenant testified that there is a lot of dust in the system. The tenant testified that turning the heating on would result in dust coming out of the ducts, which rendered the heating unusable. The tenant testified that he is allergic to dust.

Water Leak: The tenant testified that there was a leak from an upstairs pipe for three months. The tenant testified that the water flow each day would be between one and five cups. The tenant testified that the water would create a slipping hazard. The landlord testified that this was a small leak.

Window: The tenant testified that in the third week of September the landlord's partner smashed the window with a stick and that it was not repaired. The tenant testified that the window was left uncovered. As a result of the broken window, the second bedroom was unusable and had to be locked up. The landlord admits that the window was broken, but does not know how that break occurred. The landlord admits that she did not fix the window.

Garage: The tenant testified that he is entitled to one half of the garage. The tenant testified that his belongings were being stolen from the garage so he removed his belongings from the garage. The tenant testified that the landlord was storing her belongings in his portion of the garage. The tenant testified that he lost use of the space for August, September and October. The landlord testified that there was plenty of space available to the tenant for his use. The tenant provided me with an email dated 22 May 2015. In that email the tenant complains about the lack of use of the garage. The landlord responded to that email: "I am landlord so I have choice whatever I want. There will no reduce rent. You pay 650.00."

Wall: The tenant testified that there was a gap in the wall between the tenant's unit and the landlord's unit. The tenant testified that the damage was caused by the landlord's partner. The tenant testified that he could see into the landlord's unit through this crack. The landlord admits that this hole was there.

### Analysis

Pursuant to subsection 26(1) of the Act, a tenant must pay his or her rent when it is due. As such, the tenant was liable to the landlord to pay \$650.00 on 1 September 2015 and 1 October 2015.

On the basis of the evidence before me, I find that the tenant did pay his rent in full on 1 September 2015. I find that the landlord, without right, returned the money to a third party. I find the landlord is not entitled to recover \$500.00 for September's rent from the tenant as he met his obligations under the Act. It is through the landlord's own actions that she finds herself without that \$500.00. The tenant cannot be responsible for the landlord's actions after he met his obligations. If the landlord had an issue with the tenant's roommates her remedy was to issue a 1 Month Notice to End Tenancy for Cause.

The tenant has testified that he attempted to pay October's rent by way of money order. The tenant's testimony is corroborated by the tenant's son AM. The landlord denies that this occurred. There is no corroborating physical evidence for either version of events. This requires a determination of credibility. On balance, I found the tenant's version of events to be more plausible and credible and prefer his evidence on this issue over the landlord's. On this basis, I find that the landlord refused to accept payment of rent by way of money order. By attempting to pay his rent to the landlord, the tenant satisfied his obligation pursuant to subsection 26(1) of the Act. The landlord is not entitled to recover October's rent from the tenant as the landlord's loss does not result from a breach of the Act or tenancy agreement by the tenant.

For these reasons, the landlord's application to recover rent for September and October is dismissed without leave to reapply.

The tenant has applied for a reduction in rent equivalent to the reduction in the value of the tenancy. The tenant has provided evidence as to various deficiencies in the rental unit. The landlord admits to some of these deficiencies. These deficiencies do not meet the standard set out in section 32(1) of the Act.

However, the tenant has not attempted to quantify his losses in respect of the deficiencies in anyway. There is no monetary order worksheet with the tenant's application and no written accounting. Section 67 of the Act requires a party to show the amount of his or her loss. It is not my place to suggest what this amount may be. Further, the landlord is entitled to know beforehand the specifics of the tenant's claim.

On this basis, I find that the tenant has failed to establish the amount of his loss and is not entitled to recover.

The tenant's application is dismissed without leave to reapply.

The tenant has applied to recover his filing fee from the landlord. The tenant's application was made under a fee waiver. He is not entitled to recover his filing fee from the landlord.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 31, 2015

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Residential Tenancy Branch

