



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, RR, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she left a copy of the tenant's application for dispute resolution hearing package with an agent of the landlord on October 28, 2016. Based on the undisputed testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application on October 28, 2016, the day it was served.

At the outset of the hearing the tenant testified that she wished to withdraw her claim for an order to allow her to reduce the rent for repairs.

### Preliminary Issue – Repair Claim

With respect to the tenant's repair claim, I find the RTB Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it

is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenant's application is the request to cancel the 1 Month Notice. Because the tenant's claim for repair is made under section 32 of the *Act*, I find this part of the application is distinct from the tenant's request that the 1 Month Notice, be cancelled pursuant to section 47 of the *Act*.

Accordingly I find the repair portion of the tenant's application must be severed and the repair claim must be dealt with separately through an application under 32 of the *Act*. Therefore the portion of the tenant's application seeking a repair order is dismissed.

#### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

Is the tenant authorized to recover the filing fee for this application from the landlord?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the tenant the tenancy began on October 1, 2013. Rent in the amount of \$1,955.00 is payable on the first of each month. The tenant remitted \$850.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice. The grounds to end the tenancy cited in the 1 Month Notice were;

- the tenant is repeatedly late paying rent

#### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 1 Month Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's claim for an order to allow her to reduce the rent for repairs is withdrawn.

The tenant's claim for a repair order is dismissed with leave to reapply.

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$100.00 against the landlord.

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: December 05, 2016

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Residential Tenancy Branch