



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR DRI ERP RP

Introduction:

Both parties attended the hearing and gave sworn testimony that the 10 Day Notice to End Tenancy dated November 4, 2016 to be effective November 4, 2016 was served by posting on the door and the tenant's Application to Dispute by registered mail. The effective date of the Notice is automatically corrected to November 17, 2016 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as the 10 day Notice must give a full ten days notice to the tenant. The tenant applies to cancel the 10 Day Notice, for an Order that emergency repairs be done, to dispute a rent increase and to recover her filing fee.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed the tenancy began October 1, 2014. The current rent is \$800 and the tenant paid a security deposit of \$400. It is undisputed that the tenant has not paid rent for November or December so the total outstanding rent is \$1600. The landlord requests to recover this if possible.

The tenant testified she did not pay the rent because the landlord wanted \$200 more in November because she had some family staying because of a fire. She said the landlord has also failed to maintain her unit. There has been no heat for years, the vents are freezing cold. There are mice and only one garbage container so the place has too much garbage.

The landlord said they had a contractor come to look at the heat problem. The contractor confirmed there is no problem with the heat in their own unit but when he tried to enter the tenant's unit, the tenant would not allow them access as she was not home. They said this happened twice but admitted they had not provided notice of entry. They said the tenant has pets although they were prohibited, she has too many people there who make noise and create garbage and they get complaints from surrounding residents.

The tenant said the landlord only sent someone once to look at the heat problem in spring 2016 and as there was no notice, she was not home and did not want to allow

someone in her suite. She said there was sewage leakage in her son's room and the landlord had no reason to want to look in her room as that was not the problem.

In evidence is the Notice to End Tenancy.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, and has complaints, I find section 26 of the Act states a tenant must pay rent on time whether or not the landlord performs their obligations under the Act. I therefore dismiss her application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I granted the landlord an Order for Possession. The parties agreed on an effective date of December 31, 2016.

As discussed with the landlord in the hearing, the landlord has the right to make Application for any monies owed to them by the tenant. However, section 55 of the Act provides when a tenant's application is dismissed, and 55(4) (b) it is in relation to non-payment of rent, the arbitrator may grant an order requiring payment of that rent. Pursuant to that section, I grant the landlord a monetary order.

In respect to the tenant's complaints about the landlord's lack of maintenance contrary to sections 32 and 33 of the Act, I find there was insufficient or no heat provided to the tenant. Although the landlord said they attempted to address this, I find they provided no 24 hour Notice of Entry as required by section 29 of the Act. I find no written requests from the tenant regarding the heat problem although the landlord agreed she had complained which supported her contention. I find this has been a tenancy of 2 years and 2 months. I grant the tenant a rent rebate of \$20 per month for lack of the maintenance of heat. Taking into account 4 of these months would be summer months, I calculate a rent rebate of \$440 (22months x \$20). I find insufficient evidence to support the other complaints of the tenant such as mice and sewage in the suite as she provided no documentary evidence to show she had brought these matters to the landlord's attention.

Since the tenancy is at an end and the tenant is vacating, I decline to make orders for repairs at this point. I also find the landlord did not serve the Notice to claim additional rent in November so I decline to consider a rent increase since there is insufficient evidence of this.

Conclusion:

I dismiss the Application of the tenant to cancel the Notice to End Tenancy. The tenancy is at an end. I grant the landlord an Order for Possession effective December 31, 2016 as agreed. I find the tenant entitled to a rent rebate of \$440 and to recover her filing fee as her application had some merit.

I grant the landlord a monetary order for the unpaid rent of November and December 2016 pursuant to my authority under section 55 (4) (b). The calculation is below.

Unpaid rent Nov. Dec. 2016 (2x800)	1600.00
Less rent rebate to tenant	-440.00
Less filing fee to tenant	-100.00
Total Monetary Order to Landlord	1060.00

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 14, 2016

Residential Tenancy Branch