



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR ERP FF MNDC OLC

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for:

1. Cancellation of the Notice to End Tenancy for unpaid rent or utilities (“10 Day Notice”) pursuant to section 46(4);
2. A monetary order for money owed or compensation for damage or loss under the *Act* pursuant to section 67;
3. An Order pursuant to section 62(3) directing the landlord to comply with the act to make repairs;
4. An order pursuant to section 33 to make emergency repairs; and
5. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both the tenant and the landlord appeared at the hearing. They were given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) was affixed to the tenant’s apartment door on November 17, 2016. The tenant acknowledged receipt of this notice on November 17, 2016. A second 10 Day Notice was served on the tenant. This Notice was placed on the tenant’s apartment door on December 14, 2016. The tenant confirmed receipt of this notice. I find that the tenant was duly served both 10 Day Notices in accordance with section 88 of the *Act*.

The tenant gave sworn testimony that he mailed the Application for Dispute Resolution hearing package (“Hearing Package”) to the landlord via registered mail on November 18, 2016. As the landlord acknowledged receipt of the Hearing Package, I accept that the tenant served this Package to the landlord in accordance with 89 of the *Act*.

At the outset of the hearing the landlord stated that prior to the hearing's commencement, she and the tenant had agreed on a December 30, 2016 move-out date. The tenant confirmed this.

#### Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to a monetary award from the landlord for damage and loss suffered as a result of a faulty electrical system?
- Should an order be issued to the landlord requiring the landlord to comply with the *Act* to make repairs?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

Both parties explained that the tenancy in question was a month-to-month tenancy that began on November 1, 2014. Rent was set at \$750.00 per month and the landlord continues to hold a damage deposit of \$375.00 collected at the outset of the tenancy.

During the course of the hearing, the tenant explained that he had very serious concerns about the safety of the building. As a result of his frustrations and his future plans, the tenant withheld rent for November, leading to the issuance of the 10 Day Notice. The landlord confirmed that the tenant paid the rent due in full, however she could not remember the exact date it was paid, stating "it was sometime around the 20<sup>th</sup> (of November 2016)." Due to the tenant's apprehension surrounding the dangers he saw within his unit and in the building, the tenant stated that notwithstanding the 10 Day Notice, he intended on vacating the rental unit, on December 30, 2016.

Specifically, the tenant testified that:

- the lights in his living room would short and flicker;
- lightbulbs would explode due to power surges;
- plugs would spark when he attempted to use them;
- water blisters appeared in his bathroom;
- the bathroom contained no fan;
- the building's central heating operated inconsistently; and
- hallway lights would short out, flicker and had exposed wire.

As compensation for the discomfort he has experienced during his tenancy and his inability to use the power outlets, the tenant sought a monetary order of \$800.00.

The landlord acknowledged that some issues existed with the unit and hallway lighting and that she had received complaints from the tenant regarding these issues. The landlord explained that she was hesitant to enter the rental unit to perform repairs as the tenant had a cat and she feared it escaping as had previously occurred.

#### Analysis – 10 Day Notice

The landlord confirmed receipt of rent for November 2016; however, she could not provide an exact date that it was received, noting that it occurred “sometime around the 20<sup>th</sup> (of November 2016).” Absent of a confirmation of this date, and based on the tenant’s testimony indicating payment was made, it is reasonable to assume that the tenant paid the outstanding rent within 5 days of receiving the 10 Day Notice. Both parties stated that they have mutually agreed that this tenancy shall end on December 30, 2016. This was a verbal agreement that was entered into prior to the hearing and confirmed during the course of the hearing. As such, the 10 Day Notice is cancelled and of no force or effect.

#### Analysis – Monetary Order

The tenant indicated that he did not want to pursue his monetary order as he was vacating the rental property on December 30, 2016.

As the tenant’s application to cancel the 10 Day Notice was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application, pursuant to section 72 of the Act.

#### Analysis – Tenant’s Request for Emergency Repairs

The tenant has confirmed his intention to vacate the rental property on December 30, 2016. Under these circumstances, the tenant’s application for an order requiring the landlord to perform emergency repairs is moot and therefore dismissed.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed with the effect that the 10 Day Notice is of no continuing force or effect.

To give effect to the oral mutual agreement to end tenancy entered into between the parties, I issue an Order of Possession requiring the tenant to vacate the property by 1:00 P.M. on December 30, 2016.

The tenant's application for a monetary order is withdrawn.

As this tenancy is ending shortly, the tenant's application for emergency repairs is dismissed without leave to reapply.

I issue a monetary order of **\$100.00** in the tenant's favour, to recoup the filing fee for this application. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: December 29, 2016

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Residential Tenancy Branch