



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, RP, FF

### Introduction and Preliminary Matter

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, an Order that the Landlord make repairs, emergency or otherwise, for a Monetary Order for the cost of emergency repairs, and to recover the filing fee.

The hearing was conducted by teleconference on January 16, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant indicated the name of the personal names of the property managers on her Application for Dispute Resolution. One such named person, P.D., appeared at the hearing and confirmed he is a property manager for the property management company noted on the Notice. He further confirmed that the property management company noted on the Notice was the Landlord noted on the residential tenancy agreement.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to make repairs, emergency or otherwise?

3. Is the Tenant entitled to monetary compensation for the cost of emergency repairs?
4. Should the Tenant recover the filing fee?

### Background and Evidence

P.D. testified on behalf of the Landlord. He stated that the tenancy began April 1, 2016. Monthly rent is payable in the amount of \$800.00 per month on the first of the month.

P.D. stated that the Tenant failed to pay the December 2016 rent and as a result the Landlord the Notice was served on the Tenant by posting to the rental unit door on December 9, 2016.

P.D. further stated that the Tenant failed to pay the outstanding rent within five days of service of the Notice. He further stated that the Tenant failed to pay the January 2017 rent such that at the time of the hearing the Tenant was \$1,600.00 in arrears.

The Tenant also testified on her own behalf. The Tenant confirmed that her monthly rent is \$800.00 per month payable on the first of the month.

The Tenant confirmed that she did not pay rent for December 2016 or January 2017. She stated that she did not pay rent as the Landlord failed to make repairs as promised when they moved into the rental unit, such as installing a fire door, replacing a broken window, and repairing the laundry hook ups.

The Tenant failed to submit any documentation to support her claim for compensation for emergency repairs.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant testified that she has not paid the rent for December 2016 and January 2017 because the Landlord has not made repairs to the rental unit. Under section 26 of the *Act*, the Tenant must not withhold rent, *even if the Landlord is in breach of the tenancy agreement or the Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find the Tenant had no authority under the *Act* to not pay rent

On her Application for Dispute Resolution, the Tenant requested authority to reduce rent for emergency repairs. Section 33 of the *Residential Tenancy Act* deals with emergency repairs and provides as follows:

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Tenant failed to provide any evidence to support her claim that the repairs she claims to have made to the rental unit meet the definition set out in section 33(1). Further, she failed to provide evidence that she followed section 33(3) in terms of offering the Landlord an opportunity to attend to these repairs. Finally, the Tenant did not provide in evidence an account and receipts for the repairs as required by sections 33(5)(b) and 33(6)(b). Accordingly, I find that she has failed to prove that she should be entitled to reduce her rent payments by the cost of emergency repairs. Should the Tenant have evidence to support a monetary claim for the cost of repairs or renovations, the Tenant is at liberty to apply for a Monetary Order.

The Tenant's application to cancel the Notice is dismissed. Pursuant to section 55 of the *Residential Tenancy Act*, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court. As the tenancy is ending, I need not consider the Tenant's request for an Order that the Landlord make repairs, emergency or otherwise.

### Conclusion

The Tenant's application to cancel the Notice is dismissed. The Tenant's claim for authority to reduce the rent for emergency repairs is dismissed for lack of evidence. As the tenancy is ending the Tenant's claim for a repair order is no longer applicable.

The Landlord is granted an Order of Possession effective two days after service on the Tenant. This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 17, 2017

---

Residential Tenancy Branch

