



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF; CNR, MNDC, OLC, PSF, RP, 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;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- 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 tenant and the landlord's agent (the "landlord") attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*. Both parties were given full opportunity to give affirmed testimony and present their evidence.

At the outset of the hearing the tenant clarified that she was not seeking an order to reduce rent for repairs, services or facilities agreed upon but not provided. This portion of the tenant's claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? If not is the tenant entitled to cancel the landlord's 10 Day Notice?

Is the landlord entitled to a monetary order for unpaid rent?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

On December 16, 2016 the parties signed a tenancy agreement with an effective January 1, 2017 start date. The landlord permitted the tenant to move in early on December 29, 2016. As per the submitted tenancy agreement the tenancy is a fixed term until December 31, 2017 with rent in the amount of \$2,000.00 payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The parties agreed a move-in conduction inspection report was conducted on January 4, 2017. The landlord confirmed the tenant was not provided a copy of the condition inspection report. The landlord did not provide a copy of the condition inspection report as part of her documentary evidence package.

The landlord testified that the tenant was served with the landlord's 10 Day Notice, dated January 6, 2017 on the same date, by way of posting to the rental unit door where

the tenant resides. The tenant acknowledged receipt of the 10 Day Notice on January 8, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 1 Month Notice on January 6, 2017, the date the tenant acknowledged receipt of service.

#### Landlord Claim

The landlord seeks a monetary order of \$4,000.00 for unpaid rent from January 2017 to February 2017.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

#### Tenant Claim

The tenant confirmed she has not paid rent for January or February 2017. She testified that because she had not met the owner of the rental unit, she did not trust the agent would forward her rent and therefore did not pay.

The tenant seeks a monetary order. She testified that on December 29, 2016 she discovered that contents remained in her appointed storage locker and because of this she could not complete her move. She cancelled the scheduled movers and elevator. She testified that the landlord emptied the storage locker by January 1, 2017 however because of the holiday she could not secure movers or the elevator until January 4, 2017. The tenant seeks \$64.50 for each of the four days she did not have possession of the rental unit for a total of \$322.58.

The tenant testified that upon move-in she discovered the rental unit was not clean. The tenant does not seek monetary compensation for this but rather she seeks to have the landlord ordered to clean the rental unit. In an effort to support her position, the tenant provided photographs.

The tenant testified that she seeks an order for the landlord to make repairs to the stove, master bathroom sink water temperature and washer water temperature.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

#### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

At no time did the tenant argue that rent had been paid in full. In fact the tenant acknowledged withholding January and February rent. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, whether or not the landlord complies with the *Act*, *Regulation* or tenancy agreement. The tenant was obligated to pay rent in full for January and February and failed to do so.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Pursuant to section 16 of the *Act*, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into.

The tenancy, that is the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement states the tenancy was to start January 1, 2017 however the parties verbally agreed the tenant could occupy the unit December 29, 2016. Because the parties agreed the tenant could occupy the unit December 29, 2016, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

Section 7 of the *Act* establishes that upon entering a tenancy agreement, a tenant is obligated to pay rent and a landlord is obligated to provide the premises as agreed to in the tenancy agreement. If either party fails to fulfill their obligations, the other becomes entitled to compensation. The purpose of compensation is to ensure the wronged party is made whole as if the breach did not occur. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the *Regulation* or their tenancy agreement must do what is reasonable to minimize the damage or loss.

Based on the above, the evidence and testimony, and on a balance of probabilities, I make the following findings.

I find that the landlord proved that the current rent for this unit is \$2,000.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from January 2017 to February 2017. Therefore, I find that the landlord is entitled to \$4,000.00 in rent.

Although the submitted tenancy agreement does not include storage, the landlord did not argue this during the hearing. Instead the landlord testified she emptied the locker for the tenant's use sometime between December 30, 2016 and December 31, 2016. Based on this, I find the parties had a mutual agreement that storage formed part of the tenancy and because the tenant commenced occupancy on December 29, 2016 she was entitled to full possession of the storage unit on this date. I find the landlord failed to provide this facility by December 29, 2016 and instead provided it some days later.

The tenant has provided insufficient evidence to establish she required the storage locker to complete her move. Therefore I find the tenant failed to mitigate her loss and prove her entitlement to \$322.58 in compensation. However because the landlord failed to provide the storage locker by December 29, 2016, I find the tenant is entitled to a nominal award of \$100.00.

As the tenancy is set to end within two days, and a landlord's compliance may only be sought in relation to an ongoing tenancy, I dismiss the tenant's claim for a repair order.

### Set Off Claims

The landlord is entitled to \$4,000.00 in unpaid rent. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,000.00 in partial satisfaction of the monetary award. The tenant owes the landlord the balance of \$3,000.00.

The tenant is entitled to \$100.00 for the landlord's failure to provide the storage locker by December 29, 2016.

Setting off the amounts owed ( $\$3,000.00 - \$100.00 = \$2,900.00$ ) I order pursuant to section 67 of the *Act*, that the tenant pay the landlord the sum of \$2,900.00

I find both parties breached the *Act*, and therefore do not award compensation for their filing fees.

### Conclusion

Both parties breached the *Act*. The landlord failed to provide the storage locker by December 29, 2016 and the tenant failed to pay rent.

Both parties had limited success in their claims.

After setting off the claims made against each other and accounting for the security deposit paid, I find the tenant owes the landlord \$2,900.00. I issue a monetary order in the amount of \$2,900.00 to the landlord.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

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: February 09, 2017

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Residential Tenancy Branch