



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, ERP, RP, FF

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Utilities (the "10 Day Notice") pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

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*.

### 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?

Are the tenants entitled to an order for the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

As per the testimony of the parties, the tenancy began on September 15, 2015 on a fixed term until August 15, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,300.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$650.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

### *10 Day Notice*

The tenants confirmed personal receipt of the 10 Day Notice, dated February 10, 2017. The 10 Day Notice indicates utilities in the amount of \$1,481.72 remain unpaid following a written demand issued on February 2, 2017.

The parties agreed that the tenancy agreement addendum requires the tenants to pay a portion of the utilities and that utilities currently remain outstanding. During the hearing the landlord acknowledged that a written demand was not served to the tenants on February 2, 2017 or any other date. The landlord testified that the tenants were first notified of the outstanding utility amount by way of the 10 Day Notice. The tenants seek to cancel the 10 Day Notice on this basis.

### *Repairs*

The tenants seek repairs to the sliding door, fireplaces, electrical panel and bathroom ceiling. In an effort to support their position, the tenants provided a copy of a fire department home safety inspection which they attest was conducted on February 17, 2017. The tenants also provided copies of various email threads between them and the landlord which are related to the requested repairs.

#### *1. Sliding Door*

In relation to the sliding door, the parties agreed that this door is the only means of entry and exit into the rental unit. The tenants testified that this door is very difficult to open and close. The landlord testified that on the recommendation of one service repair person, she sent a quote to the owner for the replacement of the door. The landlord testified that the owner refuses to repair or replace the door.

#### *2. Fireplaces*

It is the tenants' position that two fireplaces in the unit are not to code and should be updated to comply with code. The landlord testified that in the past, she had someone look at the fireplaces but could not recall "what happened there." As far as she knew the fireplaces were in working order.

*3. Electrical Panel*

The tenants testified that they have experienced ongoing circuit breaker problems which they attribute to overload. Approximately two months ago a technician recommended replacement of the panel, yet the panel remains. In reply the landlord testified that the attending technician submitted a detailed report to the landlord which indicates the panel provided enough power to supply both the upper and lower units without concern of overload and that although there is minor damage to the bus bar, the panel remains functional and safe.

*4. Bathroom Ceiling Mold*

The tenants contend that a lack of proper ventilation has contributed to mold growth in the bathroom. They testified that they keep the fan on and leave the bathroom door open as much as possible but the mold remains. The landlord testified that she was unaware of any mold issue in the bathroom as the tenants have failed to report this.

The tenants also seek to recover the \$100.00 filing fee from the landlord.

Analysis

*10 Day Notice*

Pursuant to section 46 of the *Act*, a landlord may issue a 10 Day Notice for unpaid utilities if the tenancy agreement requires the tenant to pay utilities, the landlord issues a written demand for payment and the utilities remain unpaid more than 30 days after the written demand is served.

Based on the testimony of the parties and submitted addendum to the tenancy agreement, I find the tenants requirement to pay utilities forms part of the tenancy. However, in the absence of a written demand for payment of utilities, I find the landlord's 10 Day Notice was not in compliance with section 46 of the *Act* and therefore uphold the tenants' application to cancel the 10 Day Notice.

*Repairs*

Pursuant to section 32 of the *Act*, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant

1. *Sliding Door*

Based on the tenants' undisputed testimony that the sliding door is in need of repair, I order the landlord to obtain a certified technician to inspect the sliding door no later than April 3, 2017. If the certified technician determines that repairs are necessary, the landlord must have the repairs completed by a certified technician no later than April 18, 2017. Should the certified technician determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenants.

2. *Fireplaces*

I find the tenants have provided insufficient evidence to establish the fireplaces are not to code and require updates. This portion of the tenants claim is dismissed.

3. *Electrical Panel*

Based on the testimony and evidence presented by both parties, I am satisfied that the electrical panel does not require repair or replacement at this time. This portion of the tenants claim is dismissed.

4. *Bathroom Ceiling Mold*

I am satisfied there is an issue in the bathroom that requires further evaluation, based on the fire department home safety inspection report, in which the inspector wrote, "assess mold issue in basement bathroom..."

The landlord testified that she was unaware of the mold issue, however I find the landlord became aware of the issue through the tenants dispute resolution application which was filed February 15, 2017. In the absence of testimony or documentary evidence from the landlord showing this issue has been addressed or rectified, I order the landlord to obtain a certified mold technician to assess the bathroom "mold" no later than April 3, 2017. If the certified technician determines that mold is present and repairs are necessary, the landlord must have the repairs completed by a certified mold technician no later than April 18, 2017. Should the certified mold technician determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenants.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The tenants' application to cancel the 10 Day Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

I order the landlord to obtain a certified technician to inspect the sliding door no later than April 3, 2017. If the certified technician determines that repairs are necessary, the landlord must have the repairs completed by a certified technician no later than April 18, 2017. Should the certified technician determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenants.

I dismiss the tenants' application for repair orders for the fireplaces and electrical panel.

I order the landlord to obtain a certified mold technician to assess the bathroom "mold" no later than April 3, 2017. If the certified technician determines that mold is present and repairs are necessary, the landlord must have the repairs completed by a certified mold technician no later than April 18, 2017. Should the certified mold technician determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenants.

The tenants are entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: March 20, 2017

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Residential Tenancy Branch