



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI FF O OLC PSF RP RR FF MNR MNSD OPB OPR

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord sought:

- an Order of Possession;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- an order to withhold the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 33 of the *Act*;
- to dispute an additional rent increase pursuant to section 43 of the *Act*;
- an order for the landlord to comply with the *Act* pursuant to section 62;
- an order for the landlord to provide services or facilities required by law pursuant to section 65 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- unspecified other relief.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented at the hearing property manager, R.G., (the “landlord”).

The landlord explained that he served the tenant with an “Eviction Notice” dated May 11, 2017. He stated that he emailed this notice to the tenant, and posted it on the tenant’s door on May 11, 2017. I will address service of this document below.

The landlord stated that on June 3, 2017 he personally handed a copy of his application for dispute resolution to the tenant. Based on the landlord’s undisputed testimony, and pursuant to sections 89 of the *Act*, the tenant is found to have been duly served with the landlord’s application for dispute resolution on June 3, 2017.

The tenant testified that he served the landlord with an application for dispute resolution in person on May 21, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenant's application for dispute resolution.

The tenant explained that he served the landlord with a Monetary Order for \$3,608.00 by way of Registered Mail on June 5, 2017. A photocopy of the tenant's Canada Post Tracking Number and receipt was provided to the hearing. The tenant continued by stating that he sent a copy of this Monetary Order to the *Residential Tenancy Branch* by way of fax on June 5, 2017. The landlord denied receiving this package and no copy was received by the *Residential Tenancy Branch*. I find that pursuant to sections 88, 89 and 90 of the *Act* that the landlord is deemed served with these documents on June 10, 2017.

#### Preliminary Issues – Notices to End Tenancy

The landlord provided undisputed testimony, that he was seeking an Order of Possession for unpaid rent, and because the tenant has breached an agreement with the landlord. No Notices to End Tenancy were provided to the hearing. The landlord directed my attention to an "Eviction Notice" which had been emailed to the tenant, and had been posted on the tenant's door.

I find that the landlord's "Eviction Notice" does not comply with section 52 of the *Act*. Section 52 of the *Act* states –

**52** In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As outlined below, I find that the landlord served the tenant with a notice that fails to comply with many of these requirements.

- 1) The notice is not signed by the landlord
- 2) The grounds for ending the tenancy are not listed pursuant to the *Act*

3) The notice is not in the approved form

While the landlord provided undisputed testimony that he served his “Eviction Notice” to the tenant by way of posting it on the tenant’s door, a permissible form of service under section 89(2)(d), the landlord has failed to satisfy me that the “Eviction Notice” posted on the tenant’s door on May 11, 2017 complies with section 52 of the *Act*. I find that the tenant has therefore not been served with any notice to end tenancy.

I am dismissing the landlord’s applications for an order of possession and will only focus on the landlord’s application for a Monetary Order and for a return of the filing fee.

Issue(s) to be Decided

Should the landlord be directed to comply with the *Act*?

Can the tenant dispute a rent increase that does not comply with the *Act*?

Should the landlord be directed to provide services required by the tenancy agreement or law?

Should the landlord be directed to make repairs to the unit or site?

Can the tenant reduce the rent for repairs or services agreed upon but not provided?

Is the landlord entitled to a Monetary Order for unpaid rent?

Can the landlord retain the tenant’s security deposit in satisfaction for money owed?

Is either party entitled to recover the filing fee?

Background and Evidence

The landlord provided disputed testimony that this month-to-month tenancy began on November 1, 2015. He explained that rent was \$1,000.00 per month and a security deposit of \$500.00 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that he sought a Monetary Order of \$12,000.00 for unpaid rent from the period of May 1, 2016 to May 1, 2017.

A copy a tenancy agreement entered into between the parties was provided to the hearing as part of the landlord's evidentiary package. This document demonstrates that the tenancy started on November 1, 2015. It does not contain an amount of rent to be paid. Instead, in the heading marked 'Payment of Rent' it states, "The tenant will pay the rent of Schedule each month to the landlord on the first day of the rental period which falls on the 1 day of each (blank) subject to rent increases given in accordance with the RTA."

As part of the landlord's evidentiary package and to supplement his oral testimony, an addendum was included demonstrating that rent of \$750.00 was due for the time period covering the months of May, June, July, August, September, October and November. Rent of \$1,000.00 was due for December, January, February, March and April.

The landlord explained that the tenant has continued to pay rent of \$750.00 per month, versus the \$1,000.00 agreed upon between the parties.

The tenant largely disagreed with the testimony presented at the hearing by the landlord. The tenant stated that rent was \$750.00 and the landlord presented him with a rental increase of \$250.00, to which he did not consent. The tenant has requested that an Order be made directing the landlord to comply with the section 43 of the *Act*.

The tenant has also applied for the landlord to provide services required by the tenancy agreement or law, and for the landlord to make repairs to the unit. Specifically, the tenant argued that his water source has been jeopardized, and his well is unsafe. The tenant acknowledged that the landlord has had the water tested; however, he expressed concerns about the manner in which the water was tested, described episodes of illness that he has experienced and described possible contamination of the well. Furthermore, the tenant stated that a buried cable on the property was hazardous, and he described an unsafe bridge on the property, as well as repairs that were required on the home.

The landlord disputed this account of events and noted that the property consisted of a series of cabins, which were older in nature. He explained that the rental unit was located in the countryside where various items were scattered throughout the property. He stated that none of these items were a safety concern, and that the well had recently been tested and the analysis had come back clean. As part of his evidentiary package, the landlord produced an invoice from a heating and cooling company demonstrating that in April 2017 he spent over \$1,000.00 replacing parts of the water system. Furthermore, professional water service technicians were brought on to the property in May 2017 and these technicians reported that the water contained no contaminants.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

The landlord is seeking as Monetary Order of \$12,000.00 in relation to unpaid rent for the time period covering May 1, 2016 to May 1, 2017. The landlord is additionally looking to retain the tenant's security deposit in satisfaction for money owed under the tenancy.

During the course of the hearing the landlord provided undisputed testimony that rent of \$1,000.00 was due on the first of the month. A copy of the residential tenancy agreement entered into between the parties does not provided a figure with regard to the amount of rent due. The residential tenancy agreement provided to the hearing as part of the landlord's evidentiary package notes simply that, "The tenant will pay the rent of Schedule each month to the landlord on the first day of the rental period which falls on the 1 day of each (blank) subject to rent increases given in accordance with the RTA." The evidentiary package also contains an addendum that notes a payment schedule where rent increases from \$750.00 to \$1,000.00 from November 1 to December 1. I find that this addendum and notice of rent lacks sufficient detail to accurately establish the amount of rent to be paid. No years are present on the timelines listed, the addendum itself is not dated and the addendum does not contain any of the requirements listed under section 43 of the *Act*. Namely it is not in the approved form. The landlord has not proven that any money remains outstanding on this tenancy.

The landlord's application for a Monetary Order and to retain the tenant's security deposit in satisfaction for money owed under the tenancy is dismissed.

The tenant has applied for a reduction in rent, an Order for the landlord to comply with the *Act*, for the landlord to provide services or facilities required by the tenancy agreement or law and for repairs to be made to the property.

As I have dismissed the landlord's application for a Monetary Order and I have found that the landlord has failed to comply with the *Act* regarding a rental increase, I shall focus on the aspects of the tenant's application concerning facilities or services not provided and repairs to the property.

The tenant explained that the he was of the opinion that the water source on the property had been jeopardized. He explained that the well had become contaminated and dirty, and the landlord had failed to take steps to address these health issues. As part of his evidentiary package; however, the landlord produced detailed reports from professional water technicians who tested the water from the well and discovered that it contained no containments. Furthermore, the landlord submitted a copy of an invoice from April 2017 demonstrating that he had spent over \$1,000.00 upgrading the well. I find that the tenant has failed to provide evidence to prove that safe water services were not provided. Based on the evidence and testimony presented to the hearing by the landlord, it is apparent that he took the tenant's concerns regarding water quality very seriously and took steps to mitigate any problems that may have previously arisen from the well. Furthermore, the tenant has only provided anecdotal evidence of the dangers presented by the well. I find that insufficient evidence was presented by the tenant that the landlord should be directed to make repairs to the property, or be ordered to provide facilities, agreed upon but not provided.

As the landlord was unsuccessful in his application, he must bear the cost of his own filing fee. The tenant may reduce a future rent payment on one occasion by \$100.00 in satisfaction for a return of the filing fee from the landlord.

### Conclusion

The landlord's application for an Order of Possession is dismissed. This tenancy continues until ended in accordance with the *Act*.

The landlord's application for a monetary award is dismissed.

The landlord is ordered to comply with section 43 of the *Act* and adjust the rent according to its provisions.

The tenant's application to reduce the rent is dismissed. Rent shall remain at \$750.00 per month until it is increased in accordance with the *Act*.

The tenant's application for the landlord to provide services or facilities required by law is dismissed.

The tenant may withhold \$100.00 from a future rent payment in satisfaction for a recovery of his 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: July 24, 2017

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Residential Tenancy Branch