



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR MNR MNDC FF  
Tenant: CNR MNDC MNR RP FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 8, 2017.

The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*; and,
- to recover the filing fee for the cost of this application.

The Tenant cross-applied for the following relief:

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the 10 Day Notice);
- a monetary order for compensation for damage or loss under the *Act*;
- a monetary order for the cost of emergency repairs to the rental unit;
- an order to the landlord to make repairs to the rental unit; and,
- to recover the filing fee for the cost of this application.

Both parties attended the hearing and provided affirmed testimony. Further, both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing issues in this cross-application are related to the payment/non-payment

of rent and the related order of possession. In determining the priority issues to deal with in this hearing, I considered the Tenant's testimony regarding what sort of repairs he wanted the Landlord to make. I note that the repairs he identified were longstanding issues which have been present for over a year, and they do not appear to be an emergency such that they would take priority over the issues I identified. Further, I find there was insufficient time to properly hear all of the issues both parties applied for (listed above). As a result, I exercise my discretion to dismiss, with leave to reapply, the following grounds on the Tenant's application:

- a monetary order for compensation for damage or loss under the *Act*;
- a monetary order for the cost of emergency repairs to the rental unit;
- an order to the landlord to make repairs to the rental unit;

Further, I exercise my discretion to dismiss, with leave to reapply, the following grounds on the Landlord's application:

- a monetary order for money owed or compensation for damage or loss under the *Act*

#### Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
  - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

Both parties testified that there was no written tenancy agreement. Rather, both parties agreed in the hearing that rent in the amount of \$900.00 was to be paid on the first of each month.

The Landlord testified that the Tenant stopped paying rent in May of 2017, and he now owes rent for the months of June, July, August, September, October, and November of 2017. The Tenant testified that he stopped paying rent because there were deficiencies in the rental unit and things he wanted to be fixed.

The Tenant testified that he received the 10 Day Notice on July 29, 2017. Documentary evidence shows that the Tenant filed an application to dispute the 10 Day Notice on September 25, 2016.

#### Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note that the Tenant acknowledged receipt of the 10 Day Notice on July 29, 2017, but did not file an application to dispute the 10 Day Notice until September 25, 2016, which is well beyond the 5 days allowed under the *Act*. As a result, I find the Tenant's application is significantly late and his application to cancel the 10 Day Notice is dismissed.

In this case, I find that the Tenant owed past due rent in the amount of \$1,800.00 for June and July of 2017, at the time the 10 Day Notice was issued. After the Tenant received the 10 Day Notice, on July 29, 2017, he had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant has provided reasons why he stopped paying rent (such as the deficiencies he identified), the evidence before me indicates that the Tenant did not pay the total balance outstanding within 5 days of being served with the 10 Day Notice. Further, he did not apply to dispute the 10 Day Notice until much later. Also, there is insufficient evidence that the Tenant had a right under the *Act* to deduct all or a portion of rent.

If the Tenant felt there were deficiencies in the unit that the Landlord did not address, his option was to pay the rent and file an application for an order compelling the Landlord to address the alleged deficiencies. The Tenant is unable to withhold rent under section 26 of the *Act*, as explained above. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent for the months of June through November, inclusive (\$900.00 x 6).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$3,600.00
Other:	
Filing fee	\$100.00
<b>TOTAL:</b>	<b>\$3,700.00</b>

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,700.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 08, 2017

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Residential Tenancy Branch