



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNR, CNC, FF, LRE, MNDC OLC, PSF, RP, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated August 6, 2017.
- b. An order to dispute an increase that does not comply with an increase permitted by the Regulations
- c. An order that the landlord make emergency repairs
- d. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- e. An order for a monetary order in the sum of \$975
- f. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- g. A repair order
- h. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- i. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The hearing was initially set for October 25, 2017. I granted the tenant's request for an adjournment as she was hospitalized at the time and could not properly prepare for the hearing. I ordered that the tenant pay the landlord rent of \$1750 plus \$200 for utilities for a total of \$1950 on a without prejudice basis and subject to a determination of the amount of the rent.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on August 6, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 10, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to cancel a 10 day Notice to End Tenancy dated August 6, 2017.
- b. Whether the tenant is entitled to an order to dispute an increase that does not comply with an increase permitted by the Regulations
- c. Whether the tenant is entitled to an order that the landlord make emergency repairs
- d. Whether the tenant is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit.
- e. Whether the tenant is entitled to a monetary order and if so how much?
- f. Whether the tenant is entitled to an order the landlord provide services or facilities required by the tenancy agreement or law.
- g. Whether the tenant is entitled to a repair order
- h. Whether the tenant is entitled to an order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- i. Whether the tenant is entitled to an order to recover the cost of the filing fee?

Background and Evidence:

On January 6, 2016 the parties entered into a written tenancy agreement that provided for a 3 year term commencing February 1, 2016 and ending on January 31, 2019 with rent at \$1850 per month payable in advance on the first day of each month.

The parties subsequently initialled the first two pages of the tenancy agreement which changed the rent from \$1850 per month to "rent \$1750 plus \$125 for gas & hydro = \$1875/month and from January 2017 rent \$1750 + \$200 gas & Hydro = \$1950 /month."

The tenant paid \$1875 for rent and utilities commencing February 1, 2016 and on the first day of each month thereafter to and including December 1, 2016. On January 1, 2017 the tenant paid \$1950 for rent and utilities and continued to pay this sum to and including July 1, 2017.

On August 1, 2017 the tenant decided that the landlord failed to provide a Notice of Rent Increase in accordance with the Residential Tenancy Act. She deducted what she thought was the overpayment and tendered a cheque for the balance. The landlord refused to accept the part payment. The rent for August 2017 has not been paid. The landlord served a 10 day Notice to End Tenancy for non payment of rent. The tenant paid \$1850 for September and \$1850 for October. The landlord submits this is \$200 short for those two months. In summary the landlord submits the tenant owes \$1950 for August 2017, \$100 for September 2017 and \$100 for October 2017 for a total of \$2250. The tenant has paid \$1950 for November 2017, December 2017 and January 2018 in accordance with the Interim Order.

The parties participated in an arbitration hearing that was held on September 16, 2016. The hearing involved an application to cancel and one month Notice to End Tenancy for cause. One of the issues raised in the hearing was the amount of the rent as the tenant submitted she pays

more than the upstairs tenant but does not use the cable. The parties reached a settlement that was recorded by the arbitrator. One of the terms of the settlement was that "The tenant agrees to honor the terms of the tenancy agreement and addendum." The tenancy agreement referred to in that provision was the agreement initialled by the parties that provided that the rent was \$1750 plus \$125 for gas and hydro = \$1875 and from January 2017 rent \$1750 plus \$200 gas & hydro = \$1950/month.

### Analysis

Section 41 to 44 of the Residential Tenancy Act provides that a landlord must not increase the rent except in accordance with this Part. A landlord must not impose a rent increase for at least 12 months after the date in which the tenant's rent was first established under the tenancy agreement. It permits a landlord to increase the rent by serving a Notice of Rent Increase in the approved form. It also provides that a landlord can increase the rent only up to an amount as calculated by Regulations or **agreed upon in writing by the parties**.

Section 5 of the Residential Tenancy Act provides as follows:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the evidence and law referred to above I made the following determinations:

- The parties entered into a tenancy agreement in January 2016 that provided that the rent was \$1850 per month. The law does not permit the parties to increase the rent for at least 12 months from the date the rent was set (February 1, 2016).
- I determined the tenant is entitled to deduct (\$25 per month commencing February 1, 2016 to and including December 1, 2016 for a total of \$225. The tenant paid rent of \$1950 starting January 1, 2017 (albeit late by agreement with the landlord) and the tenant is entitled to deduct \$100 for January 2017. Thus I determined the tenant is entitled to deduct \$325.
- The parties agreed in writing that the rent would be \$1750 plus \$200 for utilities commencing January 1, 2017. I determined this agreement is binding on the parties for the to the extent it covers rent and utilities for the period after the 12 month period from the start of the tenancy for the following reasons:
  - There is an agreement in writing initialled by both parties where the tenant agreed to pay this sum.
  - The settlement agreement between the parties as recorded by the arbitrator during a hearing on September 16, 2016 the tenant agreed to "honor the terms of the tenancy agreement and addendum." The tenancy agreement referred to the additional payments. While the settlement may not be enforceable for the first 12 months because it conflicts with the Act I determined there is no reason why this

settlement should not be enforceable after that period. The Act and the law encourages the parties to reach voluntary settlements and it would be inconsistent with this principle not to enforce this.

- To enforce this agreement is consistent with the action of the parties who conducted themselves on the basis that the agreed rent and utilities was set out in the two pages that they initialled.

In summary I determined the tenant was entitled to deduct \$325 from the rent for the first 12 months of the tenancy. However, I determined the tenant was not entitled to deduct sums on and after February 1, 2017. Further I determined the present rent is \$1950 per month payable in advance on the first day of each month.

The tenant failed to pay the rent for August 2017 and owes \$1950 for rent and utilities. In addition she owes \$100 for September and \$100 for October for a total of \$2250. After deducting the overpayment the tenant owes \$1925.

Despite the determination above I determined it was not appropriate to grant an Order of Possession in this situation. The landlord is partially at fault for when he initially agreed to \$1850 per month and then shortly after changed the amount of the rent.

While it would have been prudent for the tenant to file an Application for Dispute Resolution seeking a determination as to how much she can deduct before unilaterally withholding a portion of the rent I determined it would not be fair for the tenant to be required to vacate in these circumstances. As a result I ordered that the 10 day Notice to End Tenancy dated August 6, 2017 be cancelled. The landlord has the right to serve a new 10 day Notice to End Tenancy and take steps to enforce to apply for an Order of Possession if the tenant fails to pay the arrears set out above.

#### Application for a Repair Order

After hearing the evidence presented by the parties I determined that it was appropriate to make a repair order as follows:

- a. Complete the repair to the bathroom ceiling including painting.
- b. Re-attach the wedge between the hall and bedroom so that the tenant can better access the bedroom in her wheelchair.
- c. Replace the electric fan above the stove.

I further order that the repairs be complete by January 31, 2018.

I dismissed the claim of the tenant for a monetary order in the sum of \$975 as the tenant failed to present sufficient evidence to justify this claim.

I dismissed the claim that the landlord comply with the Act, Regulations, and/or tenancy agreement as the tenant failed to provide sufficient evidence to establish this claim..

I dismissed the claim for a reduction of rent as the tenant failed to present sufficient evidence to establish that such an order was proven.

I dismissed the tenant's claim to set conditions on the landlord's right to enter as the tenant failed to present sufficient proof to establish that such an order is warranted.

The tenant has been partially successful with her claims. I determined the tenant is entitled to recover half of the cost of the filing fee or the sum of \$50 such sum may be deducted from future rent.

#### Conclusion

I determined the tenant was entitled to deduct \$325 from the rent resulting from the overpayment made in the first 12 months. I determined the present rent is \$1950 per month for rent and utilities. I determined the tenant owes \$1925 after deducting the overpayment for rent and utilities for August, September and October 2017. I ordered that the 10 day Notice to End Tenancy dated August 6, 2017 be cancelled. The landlord has the right to serve a new 10 day Notice to End Tenancy if the tenant fails to pay the arrears. I granted repair order. I further ordered the tenant is entitled to recover half of the cost of the filing fee for a total of \$50 such sum may be deducted from future rent.

**This decision is final and binding on both parties.**

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: January 02, 2018

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Residential Tenancy Branch