



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, MNRT, FFT

### Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on December 6, 2017, a monetary order to recover the cost of emergency repairs and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing.

### Preliminary Matters

The landlord said that approximately two weeks ago 18 pages of evidence was served to the tenant and Residential Tenancy Branch (RTB.) The tenant recalled receiving perhaps seven or eight pages of evidence but did not have that evidence before him. There was no record of any written submission made by the landlord to the RTB. The hearing proceeded with agreement that if any issues arose as a result of the landlords' evidence submission it would be dealt with at that time.

### Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on December 6, 2017 be cancelled?

Is the tenant entitled to compensation in the sum of \$267.75 for emergency repair of the deadbolt?

### Background and Evidence

The tenant confirmed receipt of a ten day Notice ending tenancy for unpaid rent or utilities, which had an effective date of December 16, 2017. The Notice was received on December 6, 2017.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,039.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set

out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The parties confirmed that the tenancy commenced in 1996. Rent is due on the first day of each month. The tenant said that on December 1, 2017 he placed the rent in the mail slot in the laundry room; where rent is always placed. The tenant alleges the landlord picked up the rent cheques early on the morning of December 1, 2017 which meant the tenant's cheque was not received on the due date.

The landlord said that the rent was paid on December 7, 2017. The landlord stated that the rent cheques were retrieved on December 2, 2017 and that the tenant's cheque was not in the mail box. The landlord said the tenant is often late paying rent and that some cheques are not issued for the first day of the month. The landlord said they would be willing to accept electronic payment of rent.

Some discussion ensued regarding the right of the tenant to pay via electronic transfer, in order to ensure there are not issues regarding allegations of late rent payment.

The tenant said that the deadbolt to his rental unit has been malfunctioning. The tenant did not report this problem to the landlord. On the evening of November 14, 2017 the tenant arrived at his rental unit in the evening and the deadbolt again malfunctioned, with the key breaking off in the lock.

The tenant said he had been given an emergency telephone number for the landlord but that it was in his rental unit and he could not access that number. The tenant said that only an email address for the landlord was posted in the building. The tenant did not attempt to contact the landlord via email. The tenant had to call a locksmith and have the lock repaired so he could gain access to his rental unit. The tenant said he has been asking the landlord to post an emergency number in the building.

The landlord confirmed that a telephone number for emergency repairs is not posted in the building; an email address is posted. The landlord said the tenant has been given the emergency telephone number. The landlord stated if the tenant had reported the malfunctioning deadbolt a repair would have been made, likely avoiding the problem encountered by the tenant. The landlord said the tenant could have approached someone else in the building, as all tenants have the landlord emergency contact information. The first the landlord heard of the problem was when the tenant served the hearing documents.

The tenant provided a copy of the invoice for the cost of the deadbolt repair. The lock cost \$160.00 and the service call was \$95.00; plus tax.

### Analysis

Section 46(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. The landlord has confirmed that rent was paid on December 7, 2017; the day after the Notice was issued.

Therefore, I find that the tenant has paid the rent within the required time limit and that the Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

In relation to the claim for lock repair, I have considered section 33 of the Act and find that a malfunctioning lock meets the definition of an urgently required repair. The tenant was unable to access the rental unit.

Section 33(2) and (3) of the Act provide:

*(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.*

*(3) A tenant may have emergency repairs made only when all of the following conditions are met:*

*(a) emergency repairs are needed;*

*(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*

*(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

There was no dispute that the landlord had previously given the tenant an emergency telephone number. The landlord confirmed that the emergency telephone number is not posted in a conspicuous place on the residential property. It would certainly have been helpful if the landlord had also posted the emergency telephone number in a conspicuous place on the residential property, but the landlord is not required to both supply the number and post the number.

Therefore, from the evidence before me I find that the landlord has complied with section 33(2) by previously giving the tenant an emergency telephone number.

The tenant knew the deadbolt was malfunctioning and failed to report that problem to the landlord. If the problem with the deadbolt had been reported the landlord would have been provided with an opportunity to have the lock repaired. Further, on November 14, 2017 the tenant did not take any other steps to contact the landlord such as approaching another occupant of the building with a request for a telephone number or by sending an email to the landlord in the hope that a quick response would be forthcoming. The tenant made no attempt to comply with section 33(3) of the Act.

Therefore, as the landlord complied with section 33(2) of the Act and the tenant failed to attempt to contact the landlord, I find that the claim for the cost of lock repair is reduced. I accept, on the balance of probabilities, that the deadbolt was malfunctioning and that it is reasonable to accept that the landlord would have incurred some cost to make the repair. The rental unit now has a new lock which is the property of, and to the benefit of the landlord. Therefore, I find that the tenant is entitled to compensation in the sum of \$179.20 for the new lock. I find that the cost of the emergency call-out is dismissed.

As the application has some merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution. The filing fee cost may be deducted from the next month's rent due.

### Conclusion

The tenant is entitled to deduct \$179.20 for the cost of the lock, to be deducted from the next month's rent due.

The tenant may deduct the \$100.00 filing fee from the next month's rent due.

The balance of the claim is dismissed.

This decision is final and binding and 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 17, 2018

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Residential Tenancy Branch