



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL CNR FFT MNDCT MT

### **Introduction**

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 2 Month Notice pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

SA ('landlord') testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and amendments. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application and amendments. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The landlord indicated at the beginning of the hearing that he was cancelling the 10 Day Notice to End Tenancy dated January 6, 2018. Accordingly, the 10 Day Notice is no

longer of any force or effect, and the tenant's application to cancel the 10 Day Notice was cancelled.

The tenant confirmed receipt of a second 2 Month Notice to End Tenancy dated December 28, 2017, and filed an amendment to the tenant's original application in order to make an application to cancel this second 2 Month Notice. As the tenant confirmed receipt of this second 2 Month Notice, I find the tenant duly served with the 2 Month Notice in accordance with section 88 of the *Act*.

**Preliminary Issue—Tenant's Application for an Extension of Time to File their Application for Dispute Resolution**

The tenant filed their application for dispute on December 1, 2017 to cancel the 2 Month Notice to End Tenancy for Landlord Use dated October 29, 2017, which the tenant testified was not served to him until November 29, 2017. The date of service indicated on the 2 Month Notice was October 29, 2017. The landlord did not provide any proof of service of service, any witness statements or testimony, nor did the landlord make any submissions regarding the proof of service of this 2 Month Notice for this hearing.

The tenant has the right to dispute the Notice within 15 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

Normally if the tenant does not file an Application within 15 days, they are presumed to have accepted the Notice, and must vacate the rental unit. As landlord did not provide a proof of service for the 2 Month Notice dated October 29, 2017, and did not dispute the tenant's testimony in this hearing that he received it on November 29, 2017, I find that the tenant was duly served the 2 Month Notice on November 29, 2017, the date that the tenant testified to having received the 2 Month Notice from the landlord. As the tenant filed his application on December 1, 2017, I find that the tenant had filed his application within the required timeline, and I am not required to extend the time limit as allowed under section 66(1) of the *Act*.

**Issues(s) to be Decided**

Should the landlord's 2 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on April 30, 1992. Monthly rent is set at \$1,400.00, payable on the first day of each month. The landlord collected, and still holds, a security deposit of \$425.00. The tenant continues to reside in the rental home.

The landlord issued to the tenant two 2 Month Notices, one dated October 29, 2017, and one dated December 28, 2017 for the following reason:

- the Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant testified in this hearing that he has suffered from endless harassment and intimidation from this landlord, which includes being issued multiple notices to end tenancy. In addition to the 10 Day Notice which was cancelled by the landlord in this hearing, the tenant testified that he was still awaiting the Arbitrator's decision for a previous hearing held on November 22, 2017 for his application to cancel a 2 Month Notice issued to him by the same landlord on August 21, 2017. That 2 Month Notice was cancelled by the Arbitrator as the landlord did not have the necessary permits and approvals as stated on the 2 Month Notice.

The tenant disputes the 2 Month Notices was issued in good faith, stating that the landlord has made repeated attempts to end this tenancy, and the notices were a tactic to harass and threaten him. The tenant testified that he had made requests for repairs from the landlord, and the landlord's response was to end this tenancy instead of performing those repairs. .

The landlord testified that he had served the tenants with the new 2 Month Notices as he still had the intention to demolish the home, but had now obtained the necessary permits, which were submitted in the landlord's evidence. The landlord testified that as

shown by the pictures the tenant submitted in evidence, the site requires demolition, which is the landlord's way of addressing their obligation to repair and maintain the property.

The tenant is making a monetary claim in the amount of \$35,000.00 for loss of quiet enjoyment during this tenancy as well as for the landlord's failure to perform repairs to the property. The tenant testified that he has been served multiple notices to end tenancy by the landlord for this tenancy, one of which was already dismissed during arbitration. The tenant testified that these multiple attempts to evict him have caused him extreme stress during this tenancy. The tenant testified that the landlord has not kept the rental property and home in good repair, which includes the gutters and the roof. The tenant testified in the hearing that he has made only verbal requests to the landlord, but that the landlord was aware of the required repairs. The tenant testified that he had consulted with legal counsel as to the monetary amount, and was advised to ask for \$35,000.00. The tenant testified that the gutters had fallen off 3 years ago, but that he has not filed any applications for dispute resolution requesting repairs, not has the made any written requests for repairs to the landlord.

### **Analysis**

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to...renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another*

*purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

The tenant gave undisputed sworn testimony that the landlord has had issued the tenant at least three 2 Month Notices to End Tenancy within 6 months, one of which was already dismissed by an Arbitrator. The tenant was issued the second 2 Month Notice dated October 29, 2017 while he was still awaiting the decision from the hearing for his application to cancel the first 2 Month Notice. The tenant was issued a third 2 Month Notice to End tenancy on December 28, 2017 after he filed his application on December 1, 2017 to cancel the second 2 Month Notice. In addition to the 2 Month Notices, the landlord issued the tenant a 10 Day Notice on January 6, 2018, after the tenant filed his application, and while he was awaiting his hearing for this application, and had to file an amendment to cancel the 2 new Notices to end Tenancy.

Although the landlord stated that they had issued the 2 Month Notice in order to demolish the rental home, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the multiple notices. The landlord confirmed in the hearing that the home did require extensive repairs, and the tenant testified in the hearing that he was subjected to endless harassment and intimidation from the landlord after making verbal requests for repairs. The tenant submitted that these endless notices were a tactic of the landlord to intimidate and harass him. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notices in good faith. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith, particularly when landlord did not provide a reason for why he had issued the tenant a second 2 Month Notice for the same reason on December 28, 2017, after the tenant had filed his application on December 1, 2017 to cancel the 2 Month Notice dated October 29, 2017. As a hearing date was set for February 15, 2017, and both parties were awaiting the decision of the Arbitrator, I find the landlord did not provide a sufficient explanation why the tenant was served another 2 Month Notice to End Tenancy for the identical reason provided on the Notice. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate the rental unit for the specific purpose of demolition or repairs.

Accordingly, I allow the tenant's application to cancel both 2 Month Notices dated October 29, 2017 and December 28, 2017. The landlord's 2 Month Notices, dated October 29, 2017 and December 28, 2017 are hereby cancelled and are of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant, in this application, also made a monetary claim of \$35,000.00.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

*7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their monetary claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 28 of the *Act* outlines the landlord's obligations in relation to the tenant's right to quiet enjoyment.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while the tenant had provided testimony to support that he had experienced stress during this tenancy, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill their obligations as required by sections 28 and 32 of the *Act* as stated above.

The tenant testified that he suffered for over three years in this tenancy as the landlord failed in their obligations to maintain and repair the home. I find, though, that the tenant has not supported that the landlord has failed in their obligations to take the necessary steps to repair and maintain the property as required by section 32 of the *Act*. Although the tenant submitted photos for this hearing, the tenant admitted in the hearing that he has not made any written requests to the landlord for repairs, nor has he filed any applications for dispute resolution for repairs. On this basis, I dismiss the tenant's application for a monetary order in relation to the landlord's failure to comply with section 32 of the *Act*.

The tenant requested \$35,000.00 for loss of quiet enjoyment during this tenancy, While the tenant had provided undisputed testimony to support that he has received multiple notices to end this tenancy from the landlord, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill his obligations as required by section 28 of the *Act* as stated above. I find that that landlord has complied with the *Act* in the issuance of the previous notices to end tenancy, and having failed at having these notices upheld does not sufficiently support that the landlord failed in their obligations to comply with the *Act*. Additionally, I find that he did not establish how the value of the monetary claim was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the value of the loss the tenant is seeking in this application The tenant simply stated that he had consulted with legal counsel to request the maximum allowable monetary claim..Accordingly the tenant's entire monetary claim is dismissed without leave to reapply.

As the tenant was partially successful in his application, I find the tenant is entitled to recover half of the filing fee for this application.

### **Conclusion**

The landlord cancelled the 10 Day Notice dated January 6, 2018 at the beginning of the hearing. Accordingly the 10 Day Notice dated January 6, 2018 is of no force or effect.

The tenant's application to cancel the two, landlord's 2 Month Notices, is allowed. The landlord's 2 Month Notices, dated October 29, 2017 and December 28, 2017, are both cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's monetary claim for \$35,000.00 is dismissed without leave to reapply.

I allow the tenant to implement a monetary award of \$50.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: February 16, 2018

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Residential Tenancy Branch