



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR CNC LAT SS OLC

### **Introduction:**

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:48 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 10:30 a.m. on May 24, 2018. The landlord attended the hearing and gave sworn or affirmed testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord/tenant and I were the only ones who had called into this teleconference.

The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 3, 2018 to be effective April 14, 2018 by posting it on the tenant's door. There was also a One Month Notice to End Tenancy in evidence which is unsigned and undated. The landlord confirmed the tenant served them with their Application for Dispute dated April 6, 2018 by registered mail. The tenant applies pursuant to section 46 and 47 of *The Residential Tenancy Act* (the Act):

- a) to cancel both the Notices to End Tenancy;
- b) For compensation for disturbance of their peaceful enjoyment due to ongoing renovations;
- c) To set limits on the landlord's right to access the rental unit pursuant to section 29;
- d) To order the landlord to do repairs and not block their access with garbage.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Only the landlord and her lawyer attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on February 27, 2018, rent is \$1375 plus utilities a month. There was a security deposit of \$700. The landlord testified that the tenant failed to pay the rent or utilities for April and May

and have done extensive damage to the home since the Notice to End Tenancy was served. The tenant's did a night move on May 18, 2018; the landlord had brought an application to end the tenancy early which was due to be heard on May 22, 2018. An Order of Possession is no longer required as the tenants vacated on May 18, 2018.

The landlord testified and provided documentary evidence that rent and utilities are owing for April and May 2018 in the amount of \$1629.21 for April and \$1375 for May 2018. I find section 46 states unpaid utilities are included in unpaid rent. The landlord also provided evidence that the tenant damaged the property and the cost of repair will likely be over \$18,000.

**Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, I find none of their complaints constitute valid reasons to withhold rent. Section 26 of the Act provides that a tenant must pay rent when due, whether or not the landlord has fulfilled their obligations under the Act. I therefore dismiss their application to cancel the Notice to End the Tenancy. Section 55(1) (a) provides that the arbitrator must grant an order of possession of the rental unit at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. However, I find the landlord no longer requests an Order of Possession as the tenant vacated on May 18, 2018.

I find the One Month Notice to End Tenancy for cause is invalid for it is not dated or signed. Section 52 of the Act requires a landlord to complete the approved form in order for it to be valid. However, I find the 10 Day Notice was sufficient to end the tenancy.

I find section 55(4) (b) further provides that in these circumstances, an arbitrator may grant an order requiring the payment of the rent if the dismissed application was in relation to the non payment of rent. I find the tenant's application was in regard to non payment of rent so the landlord is entitled to a monetary order for the unpaid rent. I find according to the invoices and evidence in file the unpaid rent including utilities is \$3029.21. I find the landlord entitled to a monetary order for this amount pursuant to section 55(4) (b). The landlord provided evidence of a substantial damage claim but I find this is the tenant's application and I don't have authority to hear her damage claim. The tenant has not had notice of such a claim or the amount claimed and under the

principles of Natural Justice, a party must have notice of a claim against them and have opportunity to respond.

I dismiss the remainder of the tenant's application. I find insufficient documentary evidence to support his allegations and they did not attend to give evidence in the hearing.

**Conclusion:**

I dismiss the tenant's application in its entirety without leave to reapply; the filing fee was waived. No Order of Possession is required. Pursuant to section 55((4), I grant the landlord a monetary order for the unpaid rent as calculated below.

Rent arrears including late fees & utilities April 2018	1629.21
Over holding rent May 2018	1375.00
<b>Total Monetary Order to Landlord</b>	<b>3004.21</b>

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: May 24, 2018

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Residential Tenancy Branch