



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC FFT MNDCT MNRT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the tenant advised that the evidence provided by the landlord was not provided to the tenant. The landlord's agent advised that the evidence provided by the landlord was given to him by the tenant.

Any evidence that a party wishes to rely on must be provided to the other party, even if the other party already has a copy, in order to ensure that each party is aware of what evidence has been provided to me. Since the landlord has not provided any to the tenant, I decline to consider the evidentiary material of the landlord. All evidence of the tenant has been reviewed and is considered in this Decision.

Also during the course of the hearing I advised the parties that the Residential Tenancy Branch Rules of Procedure require that multiple applications by a party for a single hearing must be substantially related to the primary application, and if they are not related, the unrelated applications may be dismissed, with or without leave to reapply.

Since there are time limits to dispute a notice to end a tenancy for cause, I am satisfied that the primary application of the tenant is for an order cancelling a notice to end the tenancy for cause. I find that the application for a monetary order for the cost of emergency repairs is related because one of the reasons stated in the One Month Notice to End Tenancy for Cause alleges repeated late rent.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is not related, and therefore, I dismiss that portion of the tenant's application with leave to reapply. I have made no findings of fact or law with respect to the merits of that matter.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?

### Background and Evidence

**The landlord's agent** testified that the landlord rented the property, a farm with multiple buildings, about 10 years ago to another person, hereafter referred to as 'Mr. R.,' who resided in a suite above the shop. During his tenancy he rented the house on the property to the tenant in this matter, without the landlord's knowledge.

Mr. R. and the landlord mutually agreed to end the tenancy at the end of October, 2017, but Mr. R. had a written agreement with the tenant in this matter. The landlord wanted the tenant to sign a new tenancy agreement with the landlord and the landlord's agent printed one and gave it to the tenant to look at and sign, but the tenant failed to return a signed copy.

The tenant paid rent to the landlord for November and December, 2017 as well as for January, 2018, but not until mid-January, 2018. He paid \$1,700.00 for November, and \$2,300.00 for each of December and January. In April, 2018 the tenant paid \$2,300.00 for each of February, March and April, but has not yet paid any rent for May, June or July, 2018. Further, the tenant has never paid a security deposit to the landlord.

On May 17, 2018 the tenant was served with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing by the tenant, and it is dated May 16, 2018 and contains an effective date of vacancy of June 30, 2018. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant has not done required repairs of damage to the unit/site;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent;
- *Residential Tenancy Act* only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenancy agreement that the tenant signed with Mr. R. specifies that rent is payable on the 1<sup>st</sup> day of each month. A copy has been provided in an Affidavit by the tenant which states:

**"Payments...** rent is allocated \$2,300 per month for the log home, and \$1,500 per month for use of the agricultural lands and farm use. The total is \$3,800.00 per month (thirty eight hundred dollars) and paid on the first of each month. Auto transfer or deposit whichever is best for tenant for ongoing payments."

The landlord's agent further testified that the required repairs of damage in the One Month Notice to End Tenancy for Cause refers to algae growing on the roof of the rental unit, noticed by the insurance adjuster who inspected the property.

The assignment or sublet is the tenant subletting from Mr. R. The tenant refused to sign a tenancy agreement with the owner, and did not pay the owner a security deposit.

The landlord's agent is a realtor and listed the property for sale in April, 2018. Checking with the Residential Tenancy Branch, the landlord's agent found out that the parties have a month-to-month agreement, not fixed as per the tenancy agreement of Mr. R. The landlord has decided to sell, and the tenant has threatened to call police if the landlord's agent enters onto the property to show it.

**The tenant** testified that he commenced a tenancy on April 1, 2016 and believed Mr. R. was the owner. The parties signed a fixed term agreement for 5 years. Due to the long term, rent was discounted. The tenant paid \$3,800.00 per month on the 1<sup>st</sup> day of each month as well as a security deposit of \$3,800.00 on April 1, 2016 to Mr. R.

In March, 2017 while the tenant was out of the country, he was contacted by his wife who advised that the owner of the property showed up and introduced himself. Upon the tenant's return he questioned Mr. R. who said that the person was his business partner.

In about August, 2017 Mr. R., who had been into an argument with the owner, told the tenant that he was moving out at the end of October, 2017 and it was up to the tenant to decide whether to move out as well.

The entire property flooded, and it was not useable for farming, and rent was reduced by \$1,500.00 per month. On November 7, 2017 the tenant sent a letter to the owner landlord asking that he contact the tenant about paying rent, but he didn't respond until mid-January, 2018. He said he'd send an agent to collect rent, and the landlord's agent collected \$1,700.00 for November's rent as well as \$3,800.00 for each of December, 2017 and January, 2018 rent in January. The landlord's agent also suggested that the tenant sign a new tenancy agreement when he showed up to collect rent again.

No rent was paid by the tenant for May, June or July, 2018 because the landlord owed the tenant money. Hydro is included in the tenancy agreement that the tenant had with Mr. R., but after he left, the tenant had to put the utility in his name effective November 1, 2017. Also, the tenancy agreement specifies that rent is \$2,300.00 for the house and \$1,500.00 for the farm land, but the tenant was not able to farm on the property due to the constant flooding, and the tenant paid the full amount of \$3,800.00. The landlord owes the difference from November, 2017 and the tenant

started to reduce rent in May, 2018. The tenant was patient about receiving it till then, but the landlord never paid it.

The tenant has also provided copies of receipts with respect to repairs made on the property that the landlord has not reimbursed the tenant for. They include:

- \$360.00 for the tenant cutting the grass at front and back for a clear view due to bears, etc.;
- \$108.94 for an invoice dated June 22, 2018 for a locksmith repair;
- \$590.00 for repairing the gate; and
- \$3,777.97 for the cost of hydro.

The tenant's Affidavit states that on May 12, 2018 the tenant made a request for the landlord to make emergency repairs and maintenance on the property, including::

- "Exhaust fan above the stove in the kitchen not existent (Fire Hazard)
- Dishwasher is not working 3 month now.
- Front door lock is not working the door can not be locked.
- Septic tank needs to be emptied.
- Gate needs service and code changing due to security.
- Leaky roof in the dining room.
- Walkway tiles needs to be removed or fixed (HAZARD for children and adults.
- Grass around the property needs mowing."

The tenant further testified that the landlord wants the tenant to vacate the rental unit quickly and be able to sell it because Mr. R. wants to put a lien on the property.

**In submissions, the landlords' agent** advised that the landlord didn't pay the hydro because the parties had no agreement. The tenant was supposed to mail rent to the landlord and had his address, but paid no rent for May, June or July, 2018.

**The tenant submitted** that Mr. R. was a legal representative of the landlord when the tenancy agreement was made.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to the allegation of the tenant failing to clean the algae off the roof of the house, such maintenance is the responsibility of the landlord, not the tenant, and therefore, that cannot be deemed to be a valid reason to issue the Notice.

With respect to assigning or subletting without the landlord's consent, the tenant did not sublet or assign. Mr. R. sublet the unit, not the tenant, and therefore the landlord cannot end the tenancy for the tenant subletting without the landlord's consent.

With respect to the tenant's failure to pay a security deposit, the tenant had a tenancy agreement with Mr. R. and testified that he paid a security deposit to him. Where a new landlord takes over a tenancy by whatever means, the onus is on the previous landlord to pass on the money to the new landlord. I am not satisfied that the landlord has established that the tenant was required to pay another security deposit or a pet damage deposit, and I do not find that to be a reason to end the tenancy.

The remaining reason for issuing the Notice is repeated late rent. The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. The only exception to that is if the tenant is required to make emergency repairs because the landlord has failed to do so and the landlord has failed to reimburse the tenant. However, the *Act* also specifies what emergency repairs are, and what the tenant must do before deducting any amount from the rent.

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(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.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I have reviewed the tenant's evidentiary material, and I do not find that the tenant had any legal right to withhold rent for 3 months for the repairs requested, nor am I satisfied that the tenant had any legal right to withhold rent due to the hydro bills that the tenant paid. The tenant does not deny that no rent has been paid for May, June or July, 2018. The minimum number of late rent payments required in order to end a tenancy for repeated late rent is 3 months rent, and I am satisfied that the landlord has established repeated late rent. Therefore, the tenant's application for an order cancelling the One Month Notice to End Tenancy for Cause is dismissed.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the Notice is in the approved form and contains information required by the *Act*, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the tenant's claim for the cost of emergency repairs, I am not satisfied that the tenant has complied with Section 33 as set out above, and I dismiss the tenant's application.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling the One Month Notice to End Tenancy for Cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: July 17, 2018

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Residential Tenancy Branch