



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, MNDCT, RP

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for the Landlord to complete emergency repairs, for the Landlord to complete regular repairs and for monetary compensation.

The Tenant and a translator for the Tenant were present for the duration of the teleconference hearing, while no one called in for the Landlord. The Tenant provided affirmed testimony that he served the Landlord in person with the Notice of Dispute Resolution Proceeding documents along with copies of his evidence on or around July 16, 2018. I accept the affirmed and undisputed testimony of the Tenant and find that the Landlord was duly served with the Notice of Hearing documents and the Tenant’s evidence in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete regular and/or emergency repairs?

Is the Tenant entitled to monetary compensation?

Background and Evidence

The Tenant provided undisputed testimony regarding the tenancy. The tenancy began in October 2016. Monthly rent, due on the first day of the month, was \$750.00 at the outset of the tenancy. Beginning in December 2017, the Landlord provided verbal notice to the Tenant that rent would be \$800.00 per month. The Tenant began paying \$800.00 per month beginning in December 2017. The Tenant was then advised verbally that beginning in June 2018, monthly rent would be \$850.00.

On July 10, 2018 the Tenant was served with a 10 Day Notice stating that \$850.00 was unpaid for July 2018 rent. The Tenant provided testimony that he paid \$850.00 on July 13, 2018. A receipt for the payment was submitted into evidence, along with receipts for rent payment from previous months.

The Tenant has also applied for compensation for the amount of rent that has been overpaid due to improper notice of rent increases. The Tenant testified that he never received official written notice of any increase and was told that the rent would keep increasing.

The Tenant is asking for repairs to be completed. The heat in the rental unit does not go above 20 degrees Celsius and often only goes up to 16 degrees. The Tenant testified that this leads to difficulty sleeping when it is cold outside. The Tenant stated that he asked the Landlord to repair the heating system and the Landlord has had people come to look at the system, but the issue has not yet been fixed. The Tenant testified that he has had many discussions with the Landlord about the heat and she is aware that it remains an issue that has not yet been resolved.

The Tenant is also concerned about one of the elements on the stove. When in use, the element gets extremely hot and when the control is turned off, the element stays on for up to one hour. The Tenant is worried about the safety concerns of the element remaining on. He testified that he advised the Landlord of the problem with the stove and the Landlord came to look at it and agreed that it needed to be fixed.

However, the Tenant stated that he was told to wait for it to be fixed and the matter has still not been resolved, despite several months passing. He confirmed that the Landlord

is aware that the problem with the stove element is still an issue and that it has not yet been resolved.

### Analysis

Section 46(4) of the *Act* states that after receiving a 10 Day Notice, a tenant has 5 days in which to pay the overdue rent or apply to dispute the notice. As the Tenant received the 10 Day Notice on July 10, 2018 and paid the outstanding rent on July 13, 2018, I find that the 10 Day Notice was cancelled and is no longer in effect. As such, the tenancy continues until ended in accordance with the *Act*.

As for the rent increases which the Tenant testified were provided to him verbally only, I find that the Landlord was not in compliance with Section 42 of the *Act* which states the following:

- 42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
  - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

As the notice of rent increases were not provided in the approved form, pursuant to Section 42(3), I find that the rent increases were not valid. I also note that a rent increase amount must comply with Section 43(1) of the *Act*:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3),
- or
- (c) agreed to by the tenant in writing.

Pursuant to Section 43(5), a tenant may deduct overpayment of rent through future rent payments. Therefore, the Tenant is allowed to recover the rent overpayment through a reduction in rent as full compensation of the amount overpaid.

As the Tenant's initial rent was \$750.00, I find that from December 2017 until May 2018, the Tenant overpaid rent by \$50.00 per month for a total overpayment of \$300.00. From June 2018 until September 2018, the Tenant paid \$850.00 per month for a total monthly overpayment of \$100.00 for a total overpayment amount of \$400.00. Therefore, I find that the Tenant may deduct a total of \$700.00 from his next monthly rent payment as compensation for the overpayments made.

The Tenant's rent remains at \$750.00 per month, until such time as the Landlord increases the rent in accordance with Sections 42 and 43 of the *Act*.

As for the Tenant's claims for repairs, I find neither of these to be repairs to be emergency repairs as outlined in Section 33 of the *Act*. However, I do find that the issue with the stove and the issue with the heat are both repairs that the Landlord has a responsibility to complete in accordance with Section 32(1) of the *Act*.

The problem with the stove element is a safety concern and must be dealt with as soon as possible. The Tenant is advised not to use the element until the matter is resolved.

The heating issue is a health and safety concern and not providing proper heating in the rental unit does not comply with Section 32(1)(a) in which the Landlord must provide the rental property in compliance with health, safety and housing standards.

Therefore, the Landlord is ordered to have certified professionals visit the rental unit and begin repairs no later than 30 days from the date of this hearing. Failure to do so may result in the Tenant reapplying for Dispute Resolution for monetary compensation for the repairs not being completed as required.

### Conclusion

The 10 Day Notice dated July 10, 2018 **is cancelled and of no force or effect**. The tenancy continues until ended in accordance with the *Act*.

The Tenant is awarded **\$700.00** for rent overpayments due to illegal rent increases. **The Tenant may deduct this amount from the next monthly rent payment.** Monthly rent remains at \$750.00 per month until a legal rent increase is issued by the Landlord.

**The Landlord is ordered** to have certified professionals attend the rental unit to assess and begin repairs on the element on the stove, as well as the heating system in the rental unit. This must be done within 30 days from the date of this hearing.

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: September 11, 2018

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Residential Tenancy Branch