



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP

### Introduction

On December 17, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking an Emergency Repair Order pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with M.R. as her advocate and the Landlord attended the hearing as well. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail and the Landlord confirmed that he received this. Based on this testimony, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not serve her evidence to the Landlord. Consequently, the Tenant’s evidence was not considered; however, she was allowed to speak to this during the hearing.

The Landlord advised that he served his evidence to the Tenant by registered mail on January 18, 2019. The Tenant confirmed that she received this evidence and was prepared to respond to it. Consequently, the Landlord’s evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair order?
- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

All parties agreed that the tenancy started on August 15, 2011 and ended when the Tenant vacated the rental unit as per the effective date on the Notice of December 22, 2018. Rent was established at \$750.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$350.00 as well.

The Landlord submitted that the Tenant had not paid December 2018 rent in full. He stated that he served the Notice to the Tenant by registered mail on December 12, 2018 which indicated that \$750.00 was outstanding on December 1, 2018. The Tenant confirmed that she received the Notice on December 15, 2018. The Notice indicated that the effective end date of the Notice was December 22, 2018.

The Tenant stated that she did not pay December 2018 rent because of her concerns that there might be black mold in the rental unit and that the Landlord did not repair the issue after he was informed that there was a problem.

#### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

### **Emergency repairs**

**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...**

**(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.**

**(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.**

**(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.

Other than simply stating that there may be mold in the rental unit, the Tenant has not provided any evidence to substantiate that the "emergency repairs" sought constituted a repair that is urgent or necessary for the health or safety of anyone or for the preservation or use of the rental unit. Furthermore, there is no evidence before me that the Tenant followed the steps in subsection (3) to have this issue dealt with or that she

undertook any repairs herself. As such, I do not find that the Tenant was entitled to deduct any amount from rent, and I dismiss this portion of her Application.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on December 15, 2018. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on December 20, 2018, the Tenant must have made her Application by this day at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant receiving the Notice. Moreover, the Tenant did not establish that she had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, as the Tenant has already vacated the rental unit on December 22, 2018, I find that granting an Order of Possession was unnecessary.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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: January 31, 2019

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Residential Tenancy Branch