



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, RR, DRI, LRE, ERP, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On January 29, 2019, the Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant also applied for a rent reduction; to dispute an illegal rent increase; for emergency repairs, and to suspend or set conditions on the Landlords right of entry.

On February 7, 2019, the Landlord applied for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. Both parties were present at the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a failure to pay rent. The Tenants claims for a repair order, and to suspend the Landlord's right to enter the unit are dismissed with leave to reapply.

### Issues to be Decided

- Did the Tenant dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within the required time period?
- Is the Landlord entitled to an order of possession due to non-payment of rent?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Tenant entitled to a rent reduction for reduction of services or facilities?

### Background and Evidence

The parties testified that the tenancy began in April 2013. Rent in the amount of \$500.00 is due to be paid to the Landlord each month. The Landlord testified that rental unit is a small 170 square foot unit.

The Landlord testified that the Tenant has failed to pay the rent owing under the tenancy agreement since February 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 23, 2019, ("the 10 Day Notice"). The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$6,000.00 which was due on January 1, 2019.

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the Notice to the Tenant's door on January 23, 2019. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the 10 Day Notice on January 23, 2019. The Tenant disputed the 10 Day Notice on January 29, 2019. The Tenant testified that he paid the application fee for the dispute on January 29, 2019. The Tenant's application to dispute the 10 Day Notice is late.

### Dispute of Rent Increase

The Tenant has applied to dispute an illegal rent increase.

The Landlord's counsel submitted that in January 2017, the Landlord increased the rent by the amount of \$50.00 per month. The Landlord's counsel submitted that in January 2018, the Landlord increased the rent again by the amount of \$125.00 per month. The Landlords counsel submitted that the Landlord did not issue the proper notice required under the Act for a rent increase and the amounts of the increases were not calculated in accordance with the tenancy regulation.

The Landlords counsel submits that the Landlord is now aware of that the rent increases were not proper. The Landlords counsel submitted that the Landlord concedes that the rent is properly \$500.00 per month.

### Unpaid Rent

The Landlord testified that the Tenant would occasionally perform handyman work on the rental property for the Landlord. The Landlord testified that the arrangement was that the Tenant would make a request to perform work and the Landlord would approve or deny the request before the work was performed. The Landlord testified that the Tenant never provided an invoice for any work performed.

The Landlord's counsel submitted that the Landlord approved the Tenant to perform work on the residential property that amounted to \$2,750.00 for the 2017 year. The Landlord's counsel submitted that the Landlord approved the Tenant to perform work on the residential property that amounted to \$90.00 for the 2018 year.

The Landlord testified that in February 2018, the Tenant unilaterally decided to stop paying the rent each month. The Landlord testified that there was no agreement that the Tenant could withhold payment of the rent and there was no pre-approval from the Landlord for the Tenant to perform any work. The Landlord testified that there was also no notification to the Landlord that work was being done. The Landlord testified that she never received any invoices or a request to pay for any materials.

The Landlords counsel submitted that the Tenant did not have a legal right to withhold payment of the rent. The Landlord is seeking a monetary order for unpaid rent at the monthly rent of \$500.00 per month.

In reply, the Tenant testified that the rental unit needs to be refurbished. He submitted that he has performed thousands of dollars of work. The Tenant testified that there were additional costs when he performed the work.

When the Tenant was asked why he has not paid the rent since February 2018, he replied that he believes the Landlord owes him compensation for the work he performed. He testified that he tried to have a conversation with the Landlord but could not reach an agreement. The Tenant provided testimony acknowledging that he did not provide the Landlord with invoices or receipts; he testified that he does not have any.

The Landlords counsel submitted that the Tenants claim that he has performed \$40,000 in work is grossly inflated, since the rental unit such a small unit.

### Analysis

Residential Tenancy Branch Rules of Procedure 2.6 provides that an application for dispute resolution has been made when it has been submitted and the fee has been paid or waived.

Section 46(5) of the Act provides if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days 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.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with the form and content of notice to end tenancy and the director, during the dispute resolution proceeding, dismisses the Tenant's application or upholds the Landlord's notice.

Residential Tenancy Policy Guideline #37 Rent Increases provides that a Tenants rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. A rent increase must be calculated in accordance with the Regulations.

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations,

or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant failed to dispute the 10 Day Notice within 5 days of receiving it. The Tenant testified he received the Notice on January 23, 2019. The Tenant was asked if he was positive that he received the Notice on the 23<sup>rd</sup> and he again confirmed the date. Pursuant to the legislation, the Tenant had five days (until January 28, 2019), to dispute the 10 Day Notice. I find that the Tenant paid the filing fee for his application on January 29, 2019. The Tenant's application to dispute the 10 Day Notice was late and is dismissed.

Pursuant to section 46(5) of the Act the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

#### *Dispute of Illegal Rent Increases*

I find that the Landlord failed to issue the proper notices for the rent increases calculated in accordance with the regulations. I find that the rent increases were illegal and have no legal effect. The monthly rent owing under the tenancy agreement remains at \$500.00 per month. The Tenant is to be credited for any rent overpayments as provided below.

#### *Unpaid Rent*

I find that there was no agreement reached between the parties that permitted the Tenant to perform work on the rental unit without first receiving pre-approval from the Landlord. I find that the Landlord was unaware that the Tenant was performing the additional work that he alleges to have performed. The Tenant's own testimony

provided that he tried to have a conversation with the Landlord but could not reach an agreement. I find that the Tenant has not paid the rent owing under the tenancy agreement for February 2018 and after.

I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached the Act and fundamentally breached the tenancy agreement.

Based on a corrected monthly rent in the amount of \$500.00 each month I find that the Tenant is responsible to pay \$6,000.00 in rent each calendar year.

I find that Tenant paid \$3,850.00 in rent for the 2017, calendar year. The Landlord approved deductions of \$2,750.00 for work that was approved and performed by the Tenant. I find that the Tenant over paid rent in the amount of \$600.00 in 2017.

I find that Tenant paid \$585.00 in rent for the 2018 calendar year. The Landlord approved a deduction of \$90.00 for work that was approved and performed by the Tenant. I find that the Tenant under paid rent in the amount of \$5,325.00 in 2018.

I find that Tenant has not paid the rent of \$500.00 owing for January 2019.

I find that the Tenant owes the Landlord \$5,825.00 comprised of unpaid rent for the 2018 calendar year and January 2019, rent of \$500.00. After crediting the Tenant for the overpayment of \$600.00 in the 2017 year, I find the Tenant owes the Landlord the balance of \$5,225.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$5,325.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Rent Reduction

The Tenant applied for a rent reduction and compensation of \$9,717.00 based on his work to remodel the rental unit. The Tenant's application provides that he gave the Landlord a discount on the work he performed.

There is insufficient evidence from the Tenant that the rent should be reduced due to a loss or restriction of a service or facility. It appears that the Tenant is seeking additional compensation for work he previously performed. The Tenant's claim for a rent reduction is dismissed. With respect to additional work performed; I found that there was no agreement reached between the parties that permitted the Tenant to perform work on the rental unit without first receiving pre-approval from the Landlord and I find that there was no agreement authorizing any additional work.

### Conclusion

The Tenant failed to file a dispute the 10 Day Notice or pay the rent owing under the tenancy agreement within 5 days of receiving it and did not have a legal right to withhold payment of the rent.

The Landlord is granted an order of possession for the rental unit effective 2 days after service on the Tenant.

The Tenant did not have a legal right to withhold payment of the rent. The Landlord is granted a monetary order in the amount of \$5,325.00 for unpaid rent and the cost of the filing fee.

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: March 18, 2019

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Residential Tenancy Branch