



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR ERP FFT OLC RP

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs or emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence.

As the tenant confirmed receipt of the 10 Day Notice on May 4, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

### **Preliminary Issue – Landlord's Evidence**

The tenant testified in the hearing that he did not receive the landlord's evidence package. The landlord testified that he had served two men with the package at the

rental address approximately 10 days before the hearing. The landlord testified that he did not know their full names.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first

Although the landlord testified that he had served the tenant with his evidence package, the tenant denies that he was ever served. The landlord was unable to provide the proper names of the parties who were personally served by him. In the absence of sufficient evidence to support that the evidence was served in accordance with section 88 of the *Act*, the landlord's evidence package will be excluded for the purposes of this hearing.

### **Issues to be Decided**

Should the landlord's 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2015, with monthly rent set at \$1,300.00, payable on the first of the month. The tenant still resides at the residence, and testified that he has never received a copy of the tenancy agreement.

The landlord issued the tenant a 10 Day Notice for Unpaid Rent on May 4, 2019. The tenant disputes this 10 Day Notice stating the he had paid the landlord, but the landlord

had failed to give him receipts for his cash payments. The landlord testified that the tenant now pays with electronic transfer, and the tenant has failed to pay his rent on time. Neither party had submitted a copy of this 10 Day Notice for this hearing.

The tenant is also requesting that the landlord perform numerous repairs to the home as it is full of black mould. The tenant submitted photographs in support of his application, and stated that this mould was due to numerous leaks in the home, and it has been detrimental to his health. The landlord disputes the tenant's claims, stating that the tenant does not properly clean the home.

### **Analysis**

Section 26(1) of the *Act* requires the tenant to pay rent when due under the tenancy agreement, "whether or not the landlord complies with this 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".

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As neither party submitted a copy of the 10 Day Notice, I am unable to verify that the 10 Day Notice is valid and complies with section 52 of the *Act*. On this basis, I allow the tenant's application to cancel the 10 Day Notice dated May 4, 2019. This tenancy will continue until ended in accordance with the *Act* and tenancy agreement. I do, however, remind the tenant of his obligations under section 26 of the *Act* as stated above.

Section 33 of the *Act* states the following in regards to emergency repairs:

### **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
- (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...
  - (v) the electrical systems....

(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.

(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)...

(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.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The tenant testified that the home is filled with black mould, and the landlord has failed to address his requests for repairs. The landlord disputes these claims, stating that the pictures depict the state of an unclean home. Although I am not satisfied that the repairs fall under the definition of emergency repairs under section 33 of the *Act*, I find that the landlord is aware of the tenant's request for repairs, but has not shown that he has complied with his obligations as a landlord by addressing the tenant's requests to maintain and repair the home. I find that the landlord's dismissal of the requests as the tenant's failure to properly clean the home is not justified in light of the photographic evidence submitted by the tenant. I order that the landlord perform repairs and maintain the home as required by section 32 of the *Act* as stated above.

I also order that the landlord provide a copy of the tenancy agreement to the tenant as required by section 13(3) of the *Act*.

I allow the tenant the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

**Conclusion**

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice, dated May 4, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord perform repairs and maintain the rental home as required by section 32 of the *Act*. I also order that the landlord provide a copy of the tenancy agreement as required by section 13(3) of the *Act*.

I allow the tenant to recover the filing fee for this application. I issue a monetary award in the tenant's favour in the amount of \$100.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 25, 2019

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Residential Tenancy Branch