



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUGH & MCKINNON REALTY  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant Application 1: RP, PSF, OLC, MNRT, MNDCT, FFT  
Tenant Application 2: CNR, RP, RR, MNRT, MNDCT, FFT

### **Introduction**

This hearing was convened as the result of the tenant's two applications for dispute resolution under the Residential Tenancy Act ("Act") regarding the same tenancy and some of the same issues.

In application 1, the tenant applied for an order requiring the landlord to make repairs to the rental unit, for an order for the landlord to provide services or facilities agreed upon but not provided, for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for the costs of emergency repairs to the rental unit, and for recovery of the filing fee paid for this application.

In application 2, the tenant applied for an order cancelling the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), for an order requiring the landlord to make repairs to the rental unit, an order allowing a reduction in ongoing rent, and for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for the costs of emergency repairs to the rental unit, and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (agent) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary and Procedural Matters

At the outset of the hearing, the agent confirmed receipt of the tenant's evidence; however, the tenant said he did not receive the landlord's evidence until the morning of the hearing.

During the hearing, the tenant confirmed that he was and had been reading the evidence during the hearing. The tenant confirmed that he was familiar with most of the landlord's evidence as they consisted of emails between the parties and third parties about ongoing issues with the rental unit.

I have determined it would not be prejudicial to the tenant to accept the landlord's documentary evidence for consideration.

Additionally, the tenant said he was withdrawing his request for repairs to the air conditioner, bathtub and carpet, as the landlord has either made the repairs or they were being made the day of the hearing. The tenant also said he is withdrawing his request to be compensated for air conditioner repair and locksmith charges, as he has been reimbursed.

Additionally, the tenant was advised that I would make a determination on whether I would consider his remaining monetary claims made in both applications prior to making a final decision. I also informed the tenant that the primary issue for the hearing was consideration of the landlord's Notice, or whether the tenancy would continue or not.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

### Background and Evidence

The written tenancy agreement submitted into evidence shows that this tenancy officially began on August 1, 2019, although the tenant was allowed to move in early on July 15, 2019. The monthly rent was \$2,900.00 and the tenant paid a security deposit of \$1,450.00.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The agent submitted that the tenant was served the Notice on October 3, 2019, by registered mail, listing unpaid rent of \$2,900.00 as of October 1, 2019. The effective vacancy date listed on the Notice was October 18, 2019. A copy of the Notice was submitted into evidence.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The agent submitted that monthly rent was not paid for October 2019.

#### *Tenant's response-*

The tenant did dispute the landlord's submission concerning the rent payment; however, the tenant asserted in his documentary evidence and testimony that he did not owe the monthly rent due to the ongoing repairs in the rental unit, the state of the rental unit, and his inability to use the rental unit.

During the hearing, the parties entered into a mediated discussion and the parties agreed to a resolution for the end of the tenancy.

### Settled Agreement on Possession of the Rental Unit

The tenant and the landlord's agent agreed to a mutual settlement under the following terms and conditions:

1. The tenant agrees to vacate the rental unit by 1:00 p.m. on November 30, 2019;

2. The tenant understands the landlord will be issued an order of possession for the rental unit, based upon the settled agreement, and that if the tenant fails to vacate the rental unit by 1:00 p.m., November 30, 2019, the landlord may serve the order of possession on the tenant for enforcement purposes.

### Analysis

As to the tenant's request for an order allowing a reduction in ongoing rent, for an order for the landlord to provide services or facilities agreed upon but not provided, for an order requiring the landlord to make repairs to the rental unit, and for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, I find these are issues relating to a tenancy that will continue. As this tenancy will be ending by November 30, 2019 and as the landlord has addressed some repair issues for the benefit of the tenant until then, I dismiss those portions of the tenant's applications, without leave to reapply.

As to all the tenant's monetary claims, including for past reductions in rent, I find those portions of the tenant's applications are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I severed the tenant's Applications and dismissed those portions, with leave to reapply.

### Conclusion

The tenant and the landlord's agent have reached a settled agreement on the issue of the landlord's Notice and for an order of possession of the rental unit as outlined above.

Portions of the tenant's applications have been severed and dismissed with leave to reapply as outlined above.

Portions of the tenant's applications have been dismissed, without leave to reapply as outlined above.

As these applications for dispute resolution were resolved by mutual agreement and dismissals, I decline to grant the tenant recovery of his filing fees.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*. The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act. Should either party violate the

terms of this settled agreement, the tenancy agreement or the Act, it is open to the other party to take steps under the Act to seek remedy.

This decision containing the recorded settlement of the parties 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: November 5, 2019

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Residential Tenancy Branch