



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, RP, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord to comply - Section 62;
3. An Order for repairs - Section 32; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms its email as set out in the Tenant’s application.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for an order for compliance is not related to the matter of whether the tenancy will end, I dismiss this claim with leave to reapply.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on February 1, 2018. Rent of \$625.00 is currently payable on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit. On February 1, 2020 the Landlord emailed the Tenant with a digital copy of a two month notice to end tenancy for Landlord's use (the "Notice"). The Landlord did not serve the Tenant with a hard copy of the Notice and the Landlord's signature on the digital copy is also digital. The Landlord has repaired the fridge and smoke alarm in the unit.

The Tenant states that the oven has not worked since the onset of the tenancy. The Tenant states that on February 3, 2020 the Landlord was asked to repair the stove and although the Landlord attended to inspect the stove no repairs were made. The Tenant claims an order for repair to the oven. The Tenant states that it has been using a toaster oven and has use of this toaster oven until the oven is repaired. The Landlord is agreeable to making either repairs to the oven or to replace the oven however the Landlord is uncertain whether this can be done during the pandemic.

### Analysis

Section 52(a) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice. Section 88 of the Act provides that All documents, other than those referred to in section 89, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service prescribed in the regulations.

As the Landlord only sent the Tenant the notice to end tenancy in digital format by email with the Landlord's signature being digital as well, I find that the Landlord has not served a written and signed notice as required under the Act. The Notice is therefore not effective to end the tenancy and is cancelled. The Landlord remains at liberty to properly serve a written notice signed by the Landlord.

Section 32(1) of the Act provides that 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.

As I consider that the availability of an oven is reasonably required for suitable occupation of the unit and given the undisputed evidence that a stove with an oven was provided to the Tenant at the onset of the tenancy, I find that the Tenant is entitled to a

working oven. I also recognize that there may be limitations on the Landlord's ability to provide a working oven to the Tenant during the pandemic. I therefore order the Landlord to either repair the oven or replace the stove as soon as is reasonably possible in the circumstances. Should the Landlord fail to act or if the Landlord acts negligently in complying with this order the Tenant has leave to reapply for compensation for the loss of the oven during the tenancy.

As the Tenant has been successful with the majority of its application, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable.

#### Conclusion

The Notice is not effective to end the tenancy and is cancelled.

The Landlord is ordered to make repairs to or replace the oven as set out above.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 06, 2020

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Residential Tenancy Branch