



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, RP, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel 10-Day Notice to End Tenancy for Unpaid Rent, issued on February 3, 2020 for \$75.00 in outstanding rent for January 2020, to cancel 10-Day Notice to End Tenancy for Unpaid Rent, issued on February 3, 2020 for \$25.00 in outstanding rent for February 2020, to request an order to repair the rental unit, to request an order for the Landlord to comply with the *Act*, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

### Issues to be Decided

- Should the Notice issued on February 3, 2020, for \$75.00 in outstanding rent for January 2020 be cancelled?
- Should the Notice issued on February 3, 2020, for \$25.00 in outstanding rent for February 2020 be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be ordered to repair the rental unit?
- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to the return of the filing fee?

### Background and Evidence

The Landlord testified that both Notices to end the tenancy had been issued on February 3, 2020. That the first notice was for \$75.00 in outstanding rent for January 2020 and that the second Notice was for \$25.00 in outstanding rent for February 2020, for a total outstanding rent of \$100.00. During the Landlord's testimony the Landlord realised that a \$100.00 award, to the Tenants, from a previous decision had not been properly credited to the Tenants' rent payment account, as ordered. The Landlord testified that due to this \$100.00 award, that the Tenants' rent is current for January 2020 and February 2020, and that these two Notices should not have been issued.

The Tenant testified that the smoke detector the Landlord installed in the rental unit was not working properly. The Tenant testified that when he held a candle in front of the smoke detector it did not go off.

The Landlord testified that the smoke detector is brand new and works fine.

The Tenant testified that they have repeatedly asked the Landlord for a copy of the tenancy agreement but the Landlord was refusing to provide them with a copy.

The Landlord testified that there is no written tenancy agreement for this tenancy.

When asked, the Tenant testified that they had never signed a tenancy agreement, just a tenancy application.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants' rent for the stated period of the Notices before me, January 2020 and February 2020 has been paid in full. Therefore, I grant the Tenants' application to cancel both the Notices dated February 3, 2020, and that the Notices are of no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

As for the Tenants' claim for an order for repairs to the rental unit, I find that the parties, in this case, offered conflicting verbal testimony regarding need for the smoke detector to be repaired. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the testimony and documentary evidence provided by both parties, and I find that there is no evidence before me to show that the smoke detector requires repair. Therefore, I dismiss the Tenants' claim for an order for the Landlord to make repairs to the rental unit.

I have reviewed the testimony and documentary evidence provided by both parties, and I find that there is no evidence before me to show that the Landlord has breached the *Act*. Therefore, I dismiss the Tenants' claim for an order for the Landlord to comply with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in this application to dispute the Notices, I find that the Tenants are entitled to recover the filing fee paid for his application. The Tenants are allowed to take a one-time deduction of \$100.00, from the next month's rent.

Conclusion

I grant the Tenants' application, and I find the 10-Day Notice for \$75.00 in outstanding rent for January 2020, dated February 3, 2020, of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants' application, and I find the 10-Day Notice for \$25.00 in outstanding rent for February 2020, dated February 3, 2020, of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants permission to take a one-time deduction of \$100.00, from their next month's rent.

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: April 9, 2020

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Residential Tenancy Branch