



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: FFT, CNR, OLC, RP, RR, PSF, DRI**  
                             **LL: FFL, OPR, OPC, MNRL, MNDL, OPN**

### Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- Authorization to recover their filing fee from the tenant pursuant to section 72;
- An order of possession for unpaid rent pursuant to section 55;
- An order of possession for cause pursuant to section 55;
- A monetary award for damages, loss and unpaid rent pursuant to section 67; and
- An order of possession for a notice to end tenancy pursuant to section 55.

The tenants applied for:

- Authorization to recover the filing fee from the landlords pursuant to section 72;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord perform repairs pursuant to section 33;
- Authorization to reduce rent pursuant to section 65;
- An order that the landlord provide services or facilities pursuant to section 65; and
- A dispute of a rent increase pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties disputed that they were served with the other's materials. Both parties gave vague testimony on how they had served the other and did not provide any documentary evidence in support of service. As both parties were well aware of the ongoing dispute and the respective claims and neither party provided substantial documentary evidence on which they intend to rely I find that neither party is prejudiced nor is there a breach of the principles of procedural fairness or natural justice by finding that they have been served with the respective materials. Both parties confirmed that they were prepared to proceed with the hearing of all issues. Therefore, in accordance with section 71 of the Act, I find that both parties have been sufficiently served with the respective materials.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Award as claimed?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlords be ordered to make repairs?

Should the tenants be authorized to reduce the rent for this tenancy? Should the landlords be ordered to provide services or facilities?

Is either party entitled to recover their filing fee from the other?

#### Background and Evidence

The tenants rent a manufactured home that is owned by the landlords. Monthly rent is \$1,025.00 payable on the first of each month. There is no written tenancy agreement.

At one point in the hearing the landlord claimed that they do not believe the Act or the Branch has jurisdiction over this tenancy but did not provide further explanation or any cogent submissions on this point.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent dated February 22, 2020 indicating a rental arrear of \$600.00 that was due on January 31, 2020. The landlord did not provide any submissions on how they calculated this arrear nor did they provide any documentary evidence in support of the 10 Day Notice.

The tenants filed their application to dispute the 10 Day Notice on February 24, 2020. The tenants dispute that there is any arrear.

In their written application the landlord makes reference to a 1 Month Notice to End Tenancy for Cause and a notice given by the tenant to end the tenancy but neither was submitted into documentary evidence and the tenant disputed any such documents exist.

The landlords claim in their application that they are seeking a monetary award of \$500.00 and provided neither documentary evidence nor cogent submissions on how they calculate this figure or why they believe they are entitled to an award in this amount.

There was a previous decision under the file number on the first page of this decision issued on February 26, 2020 following a hearing on February 21, 2020. In the earlier decision the other arbitrator ordered as follows:

The Landlords are ordered to do the following repairs:

- Repair the one window that is cracked and taped within one month of the date of this decision;
- Repair the skirting that has fallen off within three months of the date of this decision; and
- Repair or replace the dryer within three weeks of the date of this decision.

If the Landlords do not complete the above repairs, the Tenants can seek compensation for this.

The parties confirmed that the landlords have performed none of the ordered work.

The tenants seek an order that the landlords commence and complete the ordered work and authorization to reduce the rent until such work is finished. The tenants gave evidence that the failure to perform the repairs has caused further damage to the rental unit and inconvenience to the tenants. The tenants seek authorization to reduce their rent for the failure to complete repairs.

### Analysis

In accordance with Residential Tenancy Branch Rule of Procedure 6.6 the onus of proof on a balance of probabilities in most cases lies with the applicant.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case the landlords failed to meet their evidentiary burden. They provided no documentary evidence in support of their position, provided little testimony on the subject matter of their application and failed to provide simple answers to direct questions. Consequently, I find that there is insufficient evidence in support of the landlords' monetary claim, the existence or validity of any 1 Month Notice or tenant's notice and insufficient evidence in support of the grounds for the 10 Day Notice of February 22, 2020.

I therefore dismiss the landlords' application in its entirety. I allow the tenants' application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the Act.

I accept the evidence of the parties that the landlords have not commenced nor completed any of the repairs ordered in the decision of February 26, 2020. The earlier order provides the landlord with an additional month to complete the repairs to the skirting but they have failed to complete the other repairs within the time ordered.

I accept the tenants' submissions that the failure to conduct repairs in a timely manner has led to further inconvenience and deterioration of the rental unit. As such, I find it appropriate to order that the landlord comply with the earlier decision and complete the ordered repairs.

The tenant testified that they continue to reside in the rental unit. I find that the nature of the deficiencies are such that they are an inconvenience to the tenants but not such that their daily routines or quality of life are significantly impacted. Based on the foregoing, I find that a \$100.00 reduction in the monthly rent is appropriate for the loss in value of the tenancy arising from the landlord's failure to comply with the portions of the earlier order to complete the repairs within the timeline set out.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenant's favour in the amount of \$100.00 for the dryer that was not repaired

or replaced within three weeks of the February 26, 2020 decision and the cracked window that was not repaired within one month of that decision.

I further order that the monthly rent for this tenancy is reduced by \$100.00 until the repairs ordered are completed. In the event that the landlord fails to complete the repairs to the skirting by May 26, 2020, three months from the earlier decision, the tenants are authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenants' monthly rent will return to the normal monthly amount required under the tenancy agreement and the Act in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlords have applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlords are at liberty to apply for a determination as to the landlords' compliance with the previous arbitrator's decision once the landlords have undertaken the repairs ordered by the previous arbitrator.

As the tenants were successful in their application, I also find that they are entitled to recovery of the filing fees from the landlords. This results in a total monetary award of \$200.00 for retroactive rent reduction and recovery of the filing fee. As this tenancy is ongoing the tenants may satisfy this monetary award by making a one-time deduction of \$200.00 from their next scheduled rent payment.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The 10 Day Notice dated February 22, 2020 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of \$200.00 from the next scheduled rent payment.

In the event that the landlords do not complete all of the listed repairs ordered by the previous arbitrator on February 26, 2020, the monthly rent for this tenancy is reduced by \$150.00 until such time as all of the repairs are completed.

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: May 1, 2020

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Residential Tenancy Branch