



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR, LRE, OLC, RR

### Introduction

This hearing dealt with the tenants' 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 of the *Act*;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties appeared and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

At the outset of the hearing, both parties confirmed that the landlord has not issued the tenants with a 10 Day Notice that complies with section 52 of the *Act*. Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

As the tenants have not been issued a 10 Day Notice in the approved form, the tenants' application to cancel a 10 Day Notice is cancelled.

### **Issues**

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on January 1, 2020, with monthly rent set at \$3,300.00. The landlord collected a security deposit in the amount of \$1,700.00, which the landlord still holds.

The tenants are seeking a rent reduction in the amount of \$10,000.00 for various issues and services not provided during this tenancy. The tenants testified that the landlord has refused to deal with the issues or perform repairs as required. The tenants testified that the dishwasher, despite being included in the tenancy agreement, never worked properly, and would flood the house when the tenants attempted to use it. The tenants testified that the stove only had 2 working coils, and when the tenants informed the landlord, the landlord did not address the issue. The tenants testified that the heating system was also not working properly. The tenants provided copies of repair invoices and estimates in their evidentiary materials.

In addition to the appliance issues, the tenants testified that the home had a rat and mice problem, which the tenants had to resolve themselves. The tenants testified that the landlord would leave garbage and other personal belongings on the property, which were appealing for the rats and mice.

In addition to the landlord's failure to perform repairs and address outstanding issues, the tenants feel harassed by the landlord, which include the attendance of the landlord on the property, and harassment of the tenants and their friends. The tenants expressed their concern about their personal health and safety during the pandemic as they have observed the landlord touching objects such as the mailbox, and banging of their door. The tenants testified that the landlord has stored a car on the property without their permission. The tenants provided a copy of an email sent to the landlord, dated May 13, 2020, addressing their concerns. The tenants testified that instead of dealing with these issues, they were served with a notice to end tenancy on May 26, 2020.

In addition to the rent reduction, the tenants are also requesting an order that the landlord refrain from attending the property, and respect their right to quiet enjoyment.

The landlord testified that everything was in working condition at the beginning of the tenancy, and that the tenants have not made any formal, written repair requests. The landlord is also disputing the tenants' request for compensation as the tenants failed to give adequate time for the landlord to address the issues. The landlord testified that the tenants did not want them to enter the residence during the pandemic for health and safety reasons, but are willing to arrange a time to perform these repairs.

The landlord does not dispute that he had knocked on the tenants' door, but that he had never entered their living space. The landlord testified that he reserved the right to access the outside of the property in order to check his mail which was delivered to a mail box outside. The landlord testified that they had stored personal belongings on the property before the tenants had moved in, and still retain the right to do so.

### **Analysis**

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant 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.*

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicants have the burden of proof in supporting their claim for a rent reduction and monetary compensation. Although the expectations of the tenants have not been met for this tenancy, I find that the landlord has met their obligations under the *Act*, tenancy agreement, and as required by law. Although I find it undisputed that the several outstanding repairs need to be addressed in this tenancy, I am not satisfied that the tenants provided a formal written request to the landlord to perform these repairs. Furthermore, I am not satisfied that the tenants gave ample opportunity for the landlord to address these issues raised by the tenants. I find the landlord's ability to perform repairs or address issues was further impacted by the tenants' concerns about the landlord entering the property during the pandemic.

I find that the tenants have failed to provide sufficient evidence to support their claim for a rent reduction or monetary claim. I also find that the landlord has fulfilled their obligations under section 32 of the *Act*. On this basis, I dismiss the tenants' application for a rent reduction and monetary compensation without leave to reapply. I also dismiss the tenants' application for repairs without leave to reapply.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

A Ministerial Order dated March 30, 2020, while in effect during the state of emergency, restricted the landlord's right to enter the tenants' rental unit as set out below:

**Landlord's right to enter rental unit – *Residential Tenancy Act***

**8** (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.

I am not satisfied that the landlord had entered the tenants' rental unit contrary to the Act and the Ministerial Order. Furthermore, in light of the disputed evidence, I am not satisfied that the tenants have provided sufficient evidence to support any contravention of the Act by the landlord. For these reasons, I dismiss the remainder of the tenants' application without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application for recovery of the filing fee without leave to reapply.

**Conclusion**

The tenants' application to cancel the 10 Day Notice was cancelled as both parties confirmed that the tenants have not been issued a 10 Day Notice that complies with section 52 of the Act.

I dismiss the remainder of the tenants' application without leave to reapply.

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: July 2, 2020

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Residential Tenancy Branch