



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE MNDCT CNR OLC FFT

### Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on December 6, 2020 seeking orders for a cancellation of the end of tenancy notice, setting conditions to the landlords, and monetary compensation. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 2, 2021.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. Neither of the two named landlords (herein referred to as the “landlord”) attended the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under section 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the two landlords via registered mail within the prescribed timeline. The tenant stated that the package they sent to each of the two landlords included all the evidence they intended to rely on for this hearing.

Based on their submissions, I accept the tenant served notice of this hearing and their Application in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord’s absence.

Issue(s) to be Decided

- a. Is the tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice?
- b. Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?
- c. Is the landlord bound to comply with a specific section of the legislation and/or the tenancy agreement, pursuant to s. 62 of the *Act*?
- d. Is there a necessity to set conditions on the landlord's right to enter the rental unit, pursuant to s. 70 of the *Act*?
- e. Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant did not provide a copy of the tenancy agreement; however, they spoke to its terms in the hearing. The tenancy began on May 1, 2020, with the rent amount set at \$1,287. The tenant paid a security deposit of \$625.

- a. the 10-Day Notice

The tenant presented the reasons why they believe the landlord served this document to them. The landlord served this 10-Day Notice on December 4. The tenant explained how they missed a rent payment in spring 2020 – this required them to submit a new set of cheques to the landlord. This led to two sets of cheques for each calendar month through later 2020. The tenant was unable to cancel individual cheques because they did not have a record of the exact individual cheque numbers to cancel those individually. With cheques not completing, the landlord issued the 10-Day Notice on December 4 by taping it to the door of the rental unit.

The landlord did not attend the hearing to speak to the validity of this 10-Day Notice.

b. Monetary compensation

The tenant claims for two months' rent amounts here. At the time of their Application, they had paid the December rent twice. Despite this, they received a 10-Day Notice from the landlord.

The tenant was unable to cancel previous cheques they had pre-dated for upcoming months of paying rent. They issued a set of new cheques to the landlord based on the landlord's request that they do so. This was based on the landlord stating that they had no more cheques from the tenant. The tenant was unable to cancel previous cheques issued because they did not know the individual cheque numbers. This resulted in the landlord having double cheques – twice the amount of rent– for December. This is \$1,287, the equivalent of one month's rent amount.

The tenant made the Application for this hearing at the beginning of December. After this in the following month, the landlord again deposited two cheques (i.e. old and new) from the tenant, so this also resulted in twice the amount of that month's rent. In the hearing, the tenant stated they wish to amend their monetary claim to add this amount for January's extra rent payment. This is \$1,287.

The second piece of the tenant's monetary claim involves parking. They referred to a previous dispute resolution decision of this office from January 2020. In that decision, the Arbitrator found that the tenant was entitled to recover money they had paid for two stalls over 5 months.

The tenant presented that their paid parking is included in their monthly rent. They use three parking spots. Their payments have been continuing after the January 2020 decision. After that decision, two more new tenants moved into the building, and the tenant's own reserved spots were being used by these other tenants. The tenant has an immediate concern about confrontation, and even a risk of personal harm, and this means they have not been able to address the issue in proper fashion with the landlord. The tenant provided photos showing a limousine parked lengthwise across three parking spots, motorcycles in the tenant's own parking spots, and images of text messages asking the landlord about this in March 2020. The tenant also stated that other users of these spots made threats.

Throughout 2020 – from February onwards through to their December Application – the tenant has not been able to use these spots. They submitted photos showing the other

vehicles using the spots. They claim \$100 as the cost of two parking stalls, for each of the 11 months for the total of \$1,100. They submit that the landlord has not followed the previous decision which essentially states that the tenant is paying for two parking stalls at \$50 each.

c. landlord's compliance with legislation and/or the tenancy agreement

This portion of the tenant's Application concerns their overall feeling of being constantly threatened, as they stated in the hearing. These feelings revolve around issues of improper communication from the landlord that is laden with cursing, other aggressive language, and miscommunication regarding rent payments and other necessities. Individual pieces of this include the fact that the landlord issues notices to end the tenancy, and other tenants' excessive noise issues which the landlord will not resolve despite the tenant's requests. For this, the tenant provided images of their messages with the landlord on various occasions.

There is also the spectre of criminal activity within the building, and this leads to the palpable fear in the tenant for their own safety. The tenant also presented that all tires on their vehicle were punctured, twice, so this is a total of eight tires slashed on their easily identifiable work vehicle. The police have visited the building on a few occasions for miscellaneous issues.

d. conditions on the landlord's right to enter the rental unit

The tenant here presented that this stems from the landlord issuing notices to end the tenancy. They clarified that the landlord is not entering the unit. In the hearing the tenant also stated they were thinking about their own personal safety.

On their Application, the tenant stated: "I would like to have warning so I can get someone with me while in his presence." At the time of the hearing, the tenant stated they were not residing at the rental unit, instead they are temporarily residing elsewhere due to the ongoing issues with the landlord and the fear they have for their own personal safety.

e. Application filing fee

On the Application, the tenant also applies for reimbursement of the Application filing fee. This amount is \$100.

## Analysis

### a. the 10-Day Notice

The *Act* s. 46(1) provides that a landlord may end a tenancy if rent is unpaid on any day after its due date, with a notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Further, s. 46(4) states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

This 10-Day Notice was issued on December 4, 2020, and the tenant applied for its cancellation on December 6, 2020. This is within the required time limit.

In this matter, the onus is on the landlord to show that they have cause to end the tenancy. The landlord did not attend the hearing to give details on the reasons for issuing this 10-Day Notice. In contrast to this, the tenant presented details on how they could not cancel older cheques. I find as fact that, with newer cheques in place, double amounts for rent were paid. As part of their evidence on their monetary claim, the tenant presented that the landlord withdrew the rent amount payment twice.

This is affirmed evidence from the tenant, and the landlord did not attend to present details. Therefore, this 10-Day Notice is cancelled. There is no order of possession, and the tenancy will continue.

### b. Monetary compensation

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The tenant's claim here is for two months' rent amount, December 2020 and January 2021. I have allowed the tenant's amendment to their Application to include their claim for January 2021.

I find as fact that the tenant paid the December rent twice. Despite this, they received a 10-Day Notice from the landlord.

The evidence in support of the tenant's claim is a screen capture image of a stop payment for a pre-dated cheque, and a deduction for December 1, 2020 for the rent amount. The tenant provided similar evidence for the previous calendar month of November – this shows two rent amount withdrawals on the 2<sup>nd</sup> and the 19<sup>th</sup>.

From this evidence, I find the tenant has established two facts: one, December rent was double paid; two, this continued in the following month of January. A pattern was in place concerning old cheques overlapping with new cheques.

I find on a balance of probabilities, and based on the tenant's fulsome explanation, that they double paid for each of these months claimed. I so award the full rent amounts for each of December 2020 and January 2021. By s. 72(2)(a), the tenant shall withhold two months full rent payment as recompense for these amounts.

For the interruption to their full parking access, the tenant presented evidence in the form of photos. There are also different occasions where they messaged the landlord about this. I find this does not show a consistent pattern of interruption to the degree that the full monthly amount of the tenant's paid parking is in order. However, I am satisfied that the interruptions are frequent and recurring and for this reason I award the tenant \$50 for each of the 11 months they claim for, for the total of \$550. The tenant may also withhold this amount of one future rent payment.

- c. landlord's compliance with legislation and/or the tenancy agreement

The *Act* s. 28 provides as follows:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find what the tenant presents here is proof of the landlord infringing on the tenant's right to quiet enjoyment. This involves their access to their own paid parking, but more importantly, this involves their interaction with the landlord on all matters of the tenancy. What the tenant described amounts to a persistent fear of interaction with the landlord. At the time of the hearing, the tenant arranged for a temporary stay at another locale, based on their stress of dealing with the landlord.

I emphasize that the landlord must comply with the above term of the *Act* which governs the tenancy agreement. The *Act* s. 5 provides that the landlord may not avoid the *Act*.

Further, s. 7(1) provides that "the non-complying landlord . . . must compensate the other for damage or loss that results." This means there is the possibility of damages being awarded in the form of monetary compensation.

I also draw the landlord's attention to Part 5.1 of the *Act* which sets out the provisions governing compliance and enforcement. This ensure compliance with the *Act*. In addition to findings I make in this particular dispute, the *Act* allows for the imposition of administrative penalties.

d. conditions on the landlord's right to enter the rental unit

The tenant applied on this ground based on their interactions with the landlord, and not specific to situations involving the landlord's entry into their unit. My finding and order for the landlord's compliance above encompasses what the tenant presented here under this ground for dispute resolution.

e. Application filing fee

Because the tenant was successful in their claims here, I award the Application filing fee. The tenant shall withhold this \$100 from one future rent payment.

Conclusion

For the reasons listed above, I order the 10-Day Notice issued on December 4, 2020 is cancelled and the tenancy remains in full force and effect.

For the reasons listed above I order that the tenant shall withhold the amount of \$3,224 from future rent payments. This is an application of s. 72(2)(a) of the *Act*.

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: March 3, 2021

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Residential Tenancy Branch