



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDCT, OLC, RP, LRE, PSF, AS, MNRT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$16,000 pursuant to section 33;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$24,000 pursuant to section 67; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing. The landlord's son attended the hearing to act as translator for his father. All were each given a full opportunity to be heard, to present affirmed testimony and to make submissions.

Preliminary Issue – Service of Documents

The landlord testified that he was not aware of this application until he received a notification email from the Residential Tenancy Branch (the "**RTB**") two weeks ago. He testified that the tenant never served him with neither the notice of dispute resolution proceeding package nor any evidence tendered to the RTB in support of it (the "**Application Materials**").

The tenant testified that he served these documents to the landlord via email in April 2021 and on an SD card provided to his agent ("**SM**") in April 2021. The landlord confirmed that his agent received an SD card from the tenant in April but denied that it

contained the Application Materials. Rather, he testified that it contains a number of photo and video files tendered in response to a different application, brought by the landlord, which came to a hearing on June 8, 2021.

The tenant testified that the evidence in response to the landlord's application was the same as the evidence that supported the currently application. He testified that the SD card also contained the Notice of Dispute Resolution Proceeding package. The landlord denied this was the case.

The tenant admitted that he did not confirm that the landlord could access the contents of the SD after serving it on the landlord's agent, as required by RTB Rule of Procedure 3.10.5, which states:

3.10.5 Confirmation of access to digital evidence

[...]

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

In light of this, and of the landlord's testimony that they did not receive the Application Materials, I find that the tenant has failed to serve the landlord with the Application Materials in accordance with the Rules of Procedure.

I find it appropriate to dismiss the tenant's application, with leave to reapply, for the following reasons:

- 1) The parties entered into a settlement agreement on June 8, 2021 at the hearing for the landlord's application, which requires the tenant to vacate the rental unit on or before July 31, 2021.
- 2) Accordingly, much of the relief sought by the tenant is no longer required.
- 3) The amount sought by the tenant in this application exceeds the amount an arbitrator is permitted to award under the Act (it is limited to \$35,000. In recognition of this, the tenant stated that he would abandon any part of his claim of \$35,000.
- 4) The landlord indicated that he intended to make an application for arrears accrued after the 10 Day Notice was issued.

The tenant may refile his application, excluding all relief he no longer requires, and ensuring that the amount of the monetary claim is within the jurisdiction of the RTB.

The landlord may file his own application seeking a monetary order for rental arrears.

At the hearing, both parties agreed that they may serve the other with their respective notice of dispute resolution proceeding packages via email at the addresses listed on the cover of this decision. Pursuant section 71 of the Act, and by consent of the parties,

I order that each party may serve the other with one notice of dispute resolution proceeding package related to the applications described above.

I dismiss the tenant's application with 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 27, 2021

Residential Tenancy Branch