



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, RR, RP, OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord make repairs to the rental unit or property; and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, and in particular considering deductions from rent made by the tenant in accordance with the law?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, particularly for loss of use of the fitness room and for the landlord's failure to repair a door and lock?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement by refraining to claim monetary compensation from the tenant for repair to a door or lock?

### Background and Evidence

**The landlord's agent** testified that although the tenant moved in earlier, the latest tenancy agreement was for a fixed-term tenancy commencing March 1, 2021 and reverting to a month-to-month tenancy after April 30, 2022, and the tenant still resides in the rental unit. Rent in the amount of \$1,900.00 is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$950.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment on the 18<sup>th</sup> floor of a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$6,236.00 for part of May as well as June, July and August, 2021. The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by attaching it to the door of the rental unit on May 13, 2021. A copy of the first page only of a 3-page form has been provided as evidence for this hearing by the tenant. It is dated May 13, 2021 and contains an effective date of vacancy of May 27, 2021. The landlord's agent testified that he does not know how many pages were served to the tenant, however it was for unpaid rent in the amount of \$536.00 that was due on May 1, 2021.

The landlord's agent has been asking the tenant to pay the balance. The tenant provided a page showing deductions of \$262.00 for a lock and another \$80.00, and then \$300.00. The tenant also gave the landlord a receipt on May 1, 2021 regarding a lock repair on March 11, 2021; the tenant thought he could change the lock, but the landlord has no idea how it broke. The tenant continued to say that he had no safety. The landlord's agent booked an appointment with the tenant on March 26, 2021, but the tenant didn't show up or reply until after 3:00 p.m. saying that he had to work due to an emergency. The next day the tenant texted saying he had replaced a lock and wanted a refund of \$180.00, but in May the tenant deducted \$536.00 from the rent, and a copy of a cheque in the amount of \$1,364.00 payable to the landlord dated May 12, 201 has been provided as evidence for this hearing.

The receipt that the tenant showed the landlord's agent was for \$262.08 and dated May 1, 2021, a copy of which has also been provided for this hearing. Then the tenant gave another receipt from his own company dated May 11, 2021 for \$315.00 and another Invoice dated May 8, 2021 for a clogged toilet. The tenant had texted the landlord saying that the toilet was clogged, however the front desk of the complex told the tenant to get a plunger, but the tenant thought she said "plumber."

The tenant also complained that he couldn't use the fitness room, however it's a new building and the room wasn't finished yet and wasn't opened until September. On September 27, 2020 the tenant emailed the landlord saying that he was not able to register or book the time slot that he wanted for the gym. The owner tried to help the tenant, but he needs to understand that the time slot he preferred was full; there is limited space, especially due to COVID-19. The tenant wants rent reduced for that, but the calculation is wrong.

After the tenant signed the new lease, he didn't mention lack of enjoyment and still wanted to renew the lease. The tenant says the landlord owes the tenant, but there's no evidence of that or amount provided.

**The tenant** testified that with respect to the application for more time than prescribed to dispute a notice to end the tenancy, the tenant did it wrong, and the Residential Tenancy Branch explained how to do it, and said it wasn't too late. A copy of an email from the Residential Tenancy Branch to the tenant has been provided for this hearing, which suggests how to update or change the application.

A copy of the first tenancy agreement has been provide as evidence for this hearing, which commences April 15, 2020 and reverts to a month-to-month tenancy after April 30, 2021, for rent in the amount of \$1,900.00 payable on the 1<sup>st</sup> day of each month. It also shows a security deposit of \$950.00 payable by April 7, 2020. It is signed by the landlord and by the tenant on April 8, 2020. It also contains 2 pages of an Addendum with 12 terms, and states that: "12. The tenant will receive a \$50 (fifty) credit per month from the landlord for every month that the fitness facilities are not open." The second tenancy agreement has also been provided for this hearing, which also contains the same paragraph in the Addendum.

The tenant further testified that the landlord owes the tenant. The tenant paid rent late in July, 2020 and the landlord charged a \$500.00 late payment fee, which the tenant paid in November, 2020. The tenant contacted the Residential Tenancy Branch and was told that the landlord cannot charge that, and that the tenant could deduct the

amount from rent. The tenant told the landlord in an email but the landlord never answered with a clear answer.

The tenant deducted another amount from rent for not being able to book the gym, then the Strata said the landlord had to book it, but the woman couldn't speak English and wasn't in the Country. Nothing was done.

With respect to the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, the description of the claim states that the tenant had to stay with friends or have friends stay in the rental unit due to safety concerns, the door was not functioning for over 5 months, and claims \$3,800.00, being 2 months full rent or 4 month's half rent.

The tenant also didn't have a dishwasher or washer or dryer for 5 months. They all broke and never got repaired.

On January 12, 2021 the tenant was locked inside his rental unit, and no one responded for 2 days. The tenant called the landlord's son who was an agent of the landlord, but no one picked up the phone and the tenant couldn't get out. The fire department rescued the tenant on the 17<sup>th</sup>. They had to break the door. Photographs of the damaged door have been provided for this hearing, which appears to be a heavy metal door.

The tenant sent a text message to the landlord on January 17, 2021, a copy of which has been provided for this hearing stating that he did not break the door handle and asks that the door replaced soon.

The tenant saw 4 people who work in the building and one was taking photographs inside the rental unit while the tenant was laying on the couch. The landlord's agent at that time said that the tenant had to change the door immediately for a charge of \$18,000.00. The tenant was shocked, and believes they just want the tenant to leave. There is no enjoyment in the home.

The tenant further testified that around the beginning of December, 2020 the tenant had to stay out of the rental unit for 4 days for the landlord to fix the bathroom floor. No one cleaned it up and the tenant had to do it himself. The tenant believes they damaged the door to the rental unit with their equipment.

The tenant asked for a new lock because it just opens by itself. The tenant replaced the lock and gave the landlord a key, but the landlord's agents lost it. Then the landlord accused the tenant of breaking the lock, which is not true.

The tenant even found a mouse in the rental unit. The landlord doesn't respond to the tenant, so the tenant started dealing with the strata. The tenant seeks an order that the landlord comply with the *Act* or the tenancy agreement by making repairs at the landlord's expense and by not charging the tenant \$18,000.00 to replace the door.

### Analysis

Firstly, I have reviewed the email to the tenant from the Residential Tenancy Branch. The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was served to the tenant on May 13, 2021 by attaching it to the door of the rental unit, which is deemed to have been served 3 days later, or May 16, 2021. The *Act* permits a tenant to dispute such a Notice within 5 days of service, which would expire on May 21, 2021. The Rules of Procedure state that the date of filing is the date that the tenant paid the filing fee or was granted a fee waiver. The tenant obtained a fee waiver and filed the application on May 17, 2021, which is within the 5 day period, but received an email indicating that changes were required. Therefore, I find that the tenant filed the application within the time required and no more time is necessary.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the amount of unpaid rent contained in the Notice is in dispute.

The tenant testified that he was justified in deducting certain portions of rent. Where a landlord receives money as a penalty for example, the tenant does have the right to withhold the overpayment from rent. A tenant may also deduct from rent the out-of-pocket expenses for completing emergency repairs, however there are specific rules about that in the *Act*.

I have reviewed all of the evidentiary material of the parties. It is difficult to ascertain from the evidence what exactly the tenant was justified in withholding rent for, and I do not make any calculations in that regard.

The landlord's agent testified that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but does not know how many pages were served. The approved form contains 3 pages, and only 1 page has been provided by the tenant

for this hearing. The landlord has not provided any copies of the Notice. The *Act* states that a landlord must serve the approved form, and I am not satisfied that the landlord has served the approved form. Therefore, I cancel the Notice and the tenancy continues.

The evidence is not conclusive with respect to what efforts the landlord made to repair the door or how it was damaged. The tenant seeks a reduction in rent for repairs, services or facilities agreed upon but not provided. The tenant's description of the claim states that the tenant had to stay with friends or have friends stay in the rental unit due to safety concerns, the door was not functioning for over 5 months, and claims \$3,800.00, being 2 months full rent or 4 month's half rent. The tenant has provided a string of text messages between himself and an agent for the landlord dated January 17, 2021 wherein the tenant asks that the door be replaced soon, and another undated text message to the landlord asking to have the door handle fixed. The landlord's agent sent a text message to the tenant on January 24, 2021 stating that the door is damaged severely and asks the tenant to restore it immediately. I find that to be a safety concern, and whether the tenant damaged the door or not, I find that the tenant is entitled to reduce rent for the landlord's failure to repair it. Considering the tenant's undisputed testimony that he was locked inside his rental unit and no one responded for 2 days, and that the tenant had to be rescued by the fire department, I find the circumstances to be particularly aggravating, and I accept the tenant's claim of \$3,800.00. I grant a monetary order in favour of the tenant in that amount.

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. Regardless of how the door was damaged, it is necessary in an apartment complex to be able to use the door and lock it. I order the landlord to repair the door and lock, if necessary, in such a manner that the tenant can easily open it with a key and that it is safe without access to other individuals.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant's description states that the landlord asked the tenant to pay \$18,000.00 for the door. I cannot bar the landlord from making such a claim, and I dismiss this portion of the tenant's application.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 13, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,800.00.

I hereby order the landlord to repair or replace the door to the rental unit.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: August 19, 2021

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Residential Tenancy Branch