



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenant: DRI, CNL, CNR, MNDCT, RP, LRE, RR, OLC, FFT  
Landlord: OPL, MNDCL-S, FFL

### Introduction

This was a cross application hearing that dealt with three applications from the tenant and two applications from the landlord. The tenant's first application for dispute resolution was filed on April 14, 2021, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- disputation of a rent increase that is above the amount allowed by law, pursuant to section 43 of the *Act*;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties agree that the tenant served the tenant's first application for dispute resolution and evidence on the landlord via registered mail. Neither party could recall the dates the first application for dispute resolution was mailed or received. I find that the tenant's first application for dispute resolution and evidence were served on the landlord in accordance with section 89 and 88 of the *Act*.

The tenant's second application for dispute resolution was filed on May 25, 2021, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;

- disputation of a rent increase that is above the amount allowed by law, pursuant to section 43 of the *Act*;
- an Order for regular repairs, pursuant to section 32;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties agree that the tenant served the tenant's second application for dispute resolution and evidence on the landlord via registered mail. Neither party could recall the dates the second application for dispute resolution was mailed or received. I find that the tenant's second application and evidence were served on the landlord in accordance with section 89 and 88 of the *Act*.

The tenant's third application for dispute resolution was filed on June 5, 2021, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- disputation of a rent increase that is above the amount allowed by law, pursuant to section 43 of the *Act*;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties agree that the tenant served the tenant's third application for dispute resolution and evidence on the landlord via registered mail. Neither party could recall the dates the third application for dispute resolution was mailed or received. I find that the tenant's third application for dispute resolution and evidence were served on the landlord in accordance with section 89 and 88 of the *Act*.

The landlord's first application for dispute resolution was filed on May 10, 2021, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's second application for dispute resolution was filed on May 29, 2021, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not dispute receipt of the landlord's applications for dispute resolution. I find that the landlords' applications for dispute resolution were sufficiently served on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

I note that section 55(1.1) of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy for unpaid rent issued by a landlord I must consider if the landlord is entitled to a monetary order for unpaid rent if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The landlord testified that the tenant was served with his evidence. No proof of service documents were entered into evidence. The tenant testified that he did not receive the landlord's evidence. I find that the landlord has not proved that any of his evidence was served on the tenant in accordance with section 88 of the *Act*, the landlord's evidence is therefore excluded from consideration.

#### Preliminary Issue- Issues No Longer Applicable

Both parties agree that the tenant moved out of the subject rental property on July 5, 2021. As this tenancy has ended, I dismiss the following claims made by the tenant as the issues are no longer applicable:

- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- an Order for regular repairs, pursuant to section 32.

At the start of this hearing the landlord withdrew his applications for Orders of Possession. As this tenancy has ended, I dismiss the following claims made by the landlord as the issues are not longer applicable:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55; and
- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55.

At the start of the hearing, I confirmed with the tenant that the only issues being pursued by the tenant related to the tenant's claim of an illegal rent increase, damages for loss of use of the washing machine at the subject rental property and recovery of filing fees. At the start of the hearing, I confirmed with the landlord that the only issues being pursued by the landlord related to unpaid rent and recovery of filing fees.

#### Issues to be Decided

1. Did the landlord increase the rent above the amount allowed by law, contrary to sections 42 and 43 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
4. Is the tenant entitled to recover the filing fees for the tenant's three applications from the landlord, pursuant to section 72 of the *Act*?
5. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 55(1.1) and or section 67 of the *Act*?
6. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
7. Is the landlord entitled to recover the filing fees for the landlord's two applications from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 3, 2018 and the tenant moved out on July 5, 2021. At the start of this tenancy, monthly rent in the amount of \$1,500.00 was payable on the first day of each month. Both parties agree that the following email was sent from the landlord to the tenant on May 31, 2021:

Hi [tenant]. I got your rent payment minus \$220. I didn't agree to pay for landscaping. I remember talking to you and [B.] about do something that was going to cost me less than \$100 for my share. I have paid for landscaping to 3 previous tenants and as you can see nobody kept it up after I paid for it and then they enjoyed it while they were there and did not keep it up. I actually was thinking of a rent increase as you have been there for awhile. I was wanting to renew a lease with you for 1 year for \$1650 per month. My property taxes go up and my house insurance goes up every year. As I am sure you know the rental market in [the subject rental city] is very poor and not mucjmh [sic] out there. I am actually paying \$2000 per month for an upper level house in [another city]. I know I would have no problem getting \$2000 per month. That being said I think \$1650 per month is more than fair. I wont pay for the landscaping though. I will pay \$110 for landscape provided you agree to \$1650 per month and show me receipts and pics for what you got done. Let me know if that sounds fair to you.

Both parties agree that following the above email the tenant signed a new tenancy agreement on June 28, 2019 effective September 1, 2019 at a rental rate of \$1,650.00. The tenancy agreement was entered into evidence and is a fixed term tenancy agreement ending on August 31, 2020. The tenancy agreement states that at the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

The tenant testified that the landlord imposed an illegal rent increase effective September 1, 2019 in the amount of \$150.00 per month and is seeking \$150.00 per month for 20 months (September 1, 2019 to April 2021) totalling \$3,000.00. The tenant testified that he did not know the rent increase was illegal until this year.

The landlord testified that he did not serve the tenant with a rent increase. The landlord testified that the tenant agreed to sign a new tenancy agreement and agreed to the rental rate of \$1,650.00 and is therefore not entitled to his monetary claim of \$3,000.00. Both parties agree that the tenant signed the tenancy agreement and then sent the signed tenancy agreement to the landlord. The landlord testified that he then signed the tenancy agreement and sent the signed copy back to the tenant. The tenant testified that he did not know if the landlord signed the tenancy agreement. The tenancy agreement states that the tenant paid the landlord a security deposit of \$825.00.

The landlord testified that his real estate agent left a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") inside the door of the subject rental property on March 31, 2021 while the tenant's girl friend was at the subject rental property on another floor. The landlord testified that the tenant was advised of same via telephone on March 31, 2021. The tenant testified that he was out of town on March 31, 2021 and did not receive the Two Month Notice until April 2, 2021. The tenant testified that his girlfriend does not live with him and was visiting when the Two Month Notice was served.

The Two Month Notice is dated March 30, 2020 and states that the reason for ending the tenancy is that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The tenant entered into evidence the Buyer's Notice to Seller for Vacant Possession which states same. The landlord testified that the date of March 30, 2020 on the Two Month Notice is a typo and should have read March 30, 2021. The Two Month Notice states that the tenant must move out of the subject rental property by May 31, 2021.

Both parties agree that the tenant did not move out in accordance with the Two Month Notice and did not pay rent for May, June or July 2021. The tenant testified that he did not pay rent for May, June or July 2021 because he was permitted to not to pay rent to re-coup the \$150.00 per month (the alleged illegal rent increase) he paid the landlord from September 2019 to April 2021.

The landlord testified that he posted the first 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on May 20, 2021 (the "First 10 Day Notice"). The tenant testified that he received the First 10 Day Notice sometime at the end of May 2021 and that it was outside his door. The First 10 Day Notice is dated May 20, 2021 and states that the tenant failed to pay rent in the amount of \$1,650.00 that was due on May 1, 2021 and that the tenant must move out of the subject rental property by May 31, 2021.

The landlord testified that he served the tenant with the second 10 Day Notice to End Tenancy for Unpaid Rent on June 1, 2021 (the "Second 10 Day Notice"). The Second 10 Day Notice is dated June 1, 2021 and states that the tenant failed to pay rent in the amount of \$1,650.00 that was due on June 1, 2021 and must move out of the subject rental property by June 5, 2021. The tenant testified that he received the Second 10 Day Notice but does not recall on what date. The landlord testified that the Second 10 Day Notice was served too early on the tenant.

The landlord testified that he is seeking rent for the months of May, June, and July, totalling \$4,950.00.

The landlord testified that the original completion date for the sale of the subject rental property was June 4, 2021 but when the tenant refused to move out, the completion date was extended to July 5, 2021.

The tenant testified that he notified the landlord that his washing machine started damaging his clothing and linens on March 1, 2021. The tenant testified that the landlord advised the tenant to use a laundry mat because the landlord did not want to spend money on the subject rental property because he was planning on selling it. The tenant testified that he was unable to use his washing machine from March 1, 2021 to July 5, 2021. The tenant testified that he is seeking \$300.00 for his laundry expenses, time and damaged clothes and linens. Both parties agree that the landlord hired a repair person to attend at the subject rental property and inspect the washing machine. The tenant entered into evidence a receipt from a repair technician dated May 10, 2021, which states in part:

Grease from rear bearing is leaking into the tub marking clothing...\$478.22 plus labour to install, part is back ordered.

Both parties agree that the repair estimated at \$478.22 was not made. The tenancy agreement states that a washing machine is included in the rent.

The tenant did not enter into evidence any receipts from laundry mats or estimates regarding damaged clothing or linens. No other proof of the loss suffered were entered into evidence.

The landlord testified that he did not recall when the tenant first told him about the washing machine but agreed that it was not repaired while the tenant lived at the

subject rental property. The landlord testified that the new buyers wanted to purchase a new machine.

### Analysis

Sections 42 and 43 of the *Act* state:

**42** (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

**43** (1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4)[Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Both parties agree that the tenant signed the tenancy agreement for rent in the amount of \$1,650.00 starting September 1, 2019. I accept the landlord's testimony that he signed the tenancy agreement. I find that both parties signed the tenancy agreement. I find the landlord did not impose a rent increase on the tenant, the tenant voluntarily



agreed to sign a new one-year fixed term tenancy agreement effective September 1, 2019. The tenant agreed to pay \$1,650.00 per month in exchange, in part, for the security of the one-year fixed term tenancy. The *Act* does not restrict a person's ability to enter into a new tenancy agreement and the tenant is bound by the terms of the tenancy agreement he signed. I dismiss the tenant's application for \$3,000.00.

Section 88 of the *Act* set out how documents are to be served. Section 88 of the *Act* states:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

I find that leaving a copy of the Two Month Notice inside the subject rental property is not a method of service set out in section 88 of the *Act*. Nonetheless, I find that the

tenant was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*, with the Two Month Notice on April 2, 2021, when the tenant testified he received it. I accept the tenant's testimony that his girlfriend did not reside at the subject rental property at the time the Two Month Notice was served.

I find that the date typo on the Two Month Notice was an obvious error and that the tenant knew or ought to have known that the date should have read March 30, 2021, not March 30, 2020. Pursuant to section 68 of the *Act*, I find that in these circumstances it is reasonable to amend the Two Month Notice to be dated March 30, 2021. The Two Month Notice is so amended.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 49(2)(a) is June 30, 2021. I find that the corrected effective date of the Two Month Notice is June 30, 2021.

Section 51(1) and section 51(1.1) of the *Act* state:

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

I find that the tenant was not permitted to withhold May 2021's rent from the landlord under section 51(1.1) because this was not the last months' rent and because the landlord did not impose an illegal rent increase.

I accept the landlord's testimony that the First 10 Day Notice was posted on the tenant's door on May 20, 2021. I find that the tenant was deemed served with the First 10 Day Notice on May 23, 2021, three days after its posting, in accordance with section 88 and 90 of the *Act*. Pursuant to section 53 of the *Act*, I find that the corrected effective date of the First 10 Day Notice is June 2, 2021.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the testimony of both parties, I find that the tenant did not pay rent on May 1, 2021 when it was due and did not pay the outstanding rent within five days of receipt of the First 10 Day Notice. I therefore find that this tenancy ended on the corrected effective date of June 2, 2021 by way of the First 10 Day Notice. I find that since this tenancy ended on June 2, 2021, by way of the First 10 Day Notice, which is before the corrected effective date of the Two Month Notice, the tenant is not entitled to one month's free rent as set out in section 51 of the *Act*. I find that the Two Month Notice is null and void because the tenancy already ended pursuant to the First 10 Day Notice by the time the effective date of the Two Month Notice arrived.

I find that the Second 10 Day Notice was served on the tenancy on the day rent was due, not on the day after rent was due as required under section 46(1) of the *Act*. The Second 10 Day Notice is therefore null and void.

Section 55(1) and section 55(1.1) of the *Act* state:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Upon review of the 10 Day Notice I find that it conforms to the form and content requirements of the *Act*. I uphold the First 10 Day Notice. Since the tenant's application to cancel the First 10 Day Notice was dismissed and the First 10 Day Notice complies with section 52 of the *Act*, pursuant to section 55(1.1) of the *Act*, I must grant the landlord a monetary award for any unpaid rent. I find that the tenant owes the landlord

rent for May and June 2021 totalling \$3,300.00 and pro-rated rent for July 2021 pursuant to the following calculation:

$$\text{\$1,650.00 (rent) / 31 (days in July 2021) = \$53.23 * 5 (days tenant had possession) = \$216.92.}$$

I find that the landlord is not entitled to collect rent for the entire month of July 2021 as the tenant only resided in the subject rental property for five days and the landlord is not entitled to rent past the completion date of the sale, as the new owners would be entitled to rent paid after that point.

Section 65(1)(f) of the Act states that if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

I accept the tenant's testimony that the washing machine was not working properly and was damaging his clothes and that he had to use a laundry mat from March to July 5, 2021. I accept the tenant's testimony that the landlord was informed the issue on March 1, 2021 and did not repair the washer. The tenancy agreement states that a washing machine is included in the rent. I find that the landlord breached the tenancy agreement by failing to fix the washing machine.

The tenant did not enter into evidence any receipts for the laundry mat or estimates for the value of items damaged by the washing machine. The tenant was not able to provide a breakdown of how the \$300.00 claim was arrived at and so I decline to award the tenant the amount sought because the claim was not proved. I find that the tenant is entitled to a rent reduction in the amount of \$50.00 per month for loss of value to the tenancy agreement, from March 2021 to June 2021 plus a pro rated rent reduction for the first five days of July 2021, pursuant to section 65 of the Act. The calculation for the pro-rated rent reduction for the first five days of July 2021 is as follows:

$$\text{\$50 (monthly rent reduction) / 31 (days in July) = \$1.61 per day * 5 days = \$8.05}$$

The total rent reduction granted to the tenant is \$208.05.

I find that as each party was successful in one of their applications for dispute resolution, the filing fee for one application for each party is to be offset against the

other's. I find that the multiplicity of proceedings in which multiple applications were made and multiple filing fees were paid were unnecessary and resulted unnecessary additional expenses. The parties could have applied to amend their original applications for dispute resolution which would have mitigated their damages as no additional filing fees would have been required. As both parties failed to do so, neither party is entitled to recover more than one filing fee.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$825.00.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$ 3,516.92
Less laundry rent reduction	-\$208.05
Less security deposit	-\$825.00
<b>TOTAL</b>	<b>\$2,483.87</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 24, 2021

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Residential Tenancy Branch