



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, RP, PSF, LRE, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for a rent reduction - Section 65;
3. An Order for repairs - Section 32;
4. An Order for the provision of services and facilities - Section 70;
5. An Order restricting the Landlord's entry - Section 70; and
6. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed that no recording devices were being used for the hearing.

### Preliminary Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As none of the additional claims to the claim to cancel a notice to end the tenancy are related to whether or not the tenancy will end or continue, I dismiss all the claims with the exception of the claim to cancel the notice to end the tenancy and the claim for recovery of the filing fee with leave to reapply. Leave to reapply is not an extension of any limitation period.

The Landlord confirms that they received the original hearing package, including some evidence from the Tenant but did not receive any further evidence. The Tenant states that on March 4, 2022 they posted additional evidence on the door of the address used by the Landlord in the tenancy agreement. The Landlord confirmed that they did not attend this address after March 4, 2022. The Tenant confirms that they received the Landlord's evidence package.

The Tenant served their additional evidence to the address provided by the Landlord in the tenancy agreement. The Tenant is entitled to rely on this address and it is the Landlord's obligation to ensure the collection of any materials from this address either through being informed of the presence of such material or being actively at that address to collect any materials. As the Landlord failed to collect the evidence on its own volition and not from any error on the part of the Tenant, I find that the Landlord was properly served, and the Tenant's evidence may be considered.

The Tenant states that the Landlord has consistently failed to produce and provide a copy of the tenancy agreement to the Tenant. The Tenant states that no copy of the tenancy agreement that was provided to the RTB for this hearing was provided to the Tenant in the Landlord's evidence package.

Section 13(3) of the Act provides that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. Given the Tenant's undisputed evidence of not having received a copy of the tenancy agreement, I order the Landlord to provide a copy of the tenancy agreement to the Tenant no later than noon on March 23, 2022. This order was made verbally at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 1, 2013. Rent of \$900.00 is payable on the first day of each month. The tenancy agreement sets out that the Landlord collected a security deposit of \$450.00. On November 30, 2021 the Landlord posted to the Tenant's door a one month notice to end tenancy for cause dated November 30, 2021 (the "Notice"). The Notice sets out the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant or person permitted on the property by the Tenant has
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - Put the landlord's property at serious risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Noncompliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The Notice contains one detail indicating a leaky washing machine causing flooding in the house.

The Landlord states that on February 15, 2021 the pipes to the kitchen faucet froze because there was no heat in the house. The Landlord states that as a result the basement flooded and the tenant in the lower unit had to move out. The Tenant states that they had no control over the cold weather that caused the pipes to burst. The Tenant states that the Landlord has never given the Tenant any instructions about what

to do with the pipes in the winter and that during the tenancy the Landlord never checked the pipes during the winter.

The Landlord states that on September 23, 2021 there was a flood from the bathroom and washing machine area. The Landlord provides a plumbing invoice for the incident and the Landlord states that no cause could be found for the flood. The Landlord states that on November 2, 2021 a flood occurred from a leaking washing machine causing damage to the basement. The Landlord states that at the time the plumber did not inspect the washing machine. The Landlord states that they only changed the water lines and a tap in the sink. The Landlord provides photos taken November 3, 2021. The Landlord states that on November 4, 2021 another flood occurred with water on the floor from the washing machine that leaked to the basement. The Landlord states that the plumber then took the washing machine and told the Landlord that it would be inspected. The Landlord states that the plumber informed the Landlord that the machine was the problem. The Landlord states that since the last flood no further problems have occurred. The Landlord states that the flooding caused the property to be at significant risk as the ceiling between the upper and lower floor is rotting. The Landlord states that no repairs have been made to the ceiling and that no dryers were brought in after the floods. The Landlord states that the basement cement floor has also been damaged. The Landlord states that they have tried to end the tenancy before due to the Tenant having pets that are not allowed however the Landlord has not been successful each time it tried to end the tenancy.

The Tenant states that on October 31, 2021 the Landlord was renovating the basement when the Landlord texted the Tenant about a leak. The Tenant states that the washing machine was not draining and that the Tenant saw a small amount of water on the floor. The Tenant states that they stopped using the machine on October 31, 2021. The Tenant states that the Landlord's brother came to the unit on November 1, 2021 and made repairs to the bathroom faucet and that while the brother checked other areas, they never checked the washing machine. The Tenant states that the Landlord was

informed on November 1, 2021 that the washing machine had not been draining and had not been used since the day before. The Tenant states that on November 2, 2021 the Landlord texted that there was still a leak. The Tenant states that on November 3, 2021 the Landlord did more work in the unit and removed the washing machine. The Tenant states that the water shown in the Landlord's photo came from the Landlord having dumped the water from the washing machine onto the floor. The Tenant states that they purchased a new washing machine that was hooked up on November 15, 2021. The Tenant states that no further problems have occurred. The Tenant states that after this date the Landlord again informed the Tenant that a leak was occurring. The Tenant states that nothing was coming from under the replacement washing machine and that the Landlord did not come until November 19, 2021. The Tenant states that the Landlord did not bring a plumber and although the Tenant offered to show the Landlord that no leak was coming from the machine the Landlord only separated the plumbing from the machine and toilet. The Tenant states that the Landlord drilled new things in the floor then shut off the water to the laundry.

The Landlord states that the replacement machine was a used machine and that they did not bring a plumber on November 19, 2021 because they knew where the water was coming from. The Landlord states that before the Tenant hooked up the replacement machine, they had left it sit in the garage for two weeks in minus 10 Celsius weather

### Analysis

Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. The approved form includes a section for the Landlord to state details of the reasons. The form notes that the notice may be cancelled if details are not provided. As the Notice does not include any details referring to the number of occupants, any material term of the tenancy agreement or an order under the legislation I find that the Notice is not effective to end the tenancy for these reasons.

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk. The Notice does not detail anything in relation to freezing pipes. There is no evidence that the freezing of the pipes is related to the washing machine or flooding from the washing machine. There is no evidence that the Tenant knew or ought to have known that the pipes could or would freeze on February 15, 2021. For these reasons I find that the Landlord has not substantiated that the Tenant acted or was negligent in relation to the pipes.

While there is evidence that on October 31, 2021 the original washing machine failed to empty, the Tenant's evidence of not using the machine after this date held a ring of truth and the Landlord provided no supporting plumbing evidence that the use of the machine caused the water to appear at any time. While there were no further water leaks after the removal of the machine, I note that the Landlord also made more repairs in the area at this time. For these reasons I find that the Landlord has provided insufficient evidence that the Tenant acted or was negligent in causing any leak. Although water again appeared after the replacement machine was in place, again there is no evidence to support that the machine was the cause. There is no evidence to support that leaving a washing machine in a garage for a few days would cause the machine to malfunction or that the Tenant should have been aware of such possible damage. Even if the replacement machine caused another leak, there is no evidence that the Tenant could or should have known that it would cause a leak. There is no evidence that the leaks caused any jeopardy to anyone's health, safety or lawful rights. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant acted or was negligent in causing any risk to the property. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant's claim has been successful I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I order the Landlord to provide a copy of the tenancy agreement to the Tenant no later than noon on March 23, 2022. The Landlord was given this order verbally at the hearing.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 6, 2022

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Residential Tenancy Branch