



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, MNRT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 15, 2022 (the "10 Day Notice") pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy for Cause pursuant to section 47; and
- a Monetary Order in the amount of \$4,100.00 for the cost of emergency repairs that Tenant made during the tenancy pursuant to section 33.

The Landlord, the Landlord's agent DP, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the notice of dispute resolution proceeding package. DP confirmed the Landlord did not submit any documentary evidence and will be relying on oral testimony.

Records indicate that the Tenant submitted additional documentary evidence (the "Additional Evidence") to the Residential Tenancy Branch on June 1, 2022. DP testified

the Landlord did not receive a copy of the Additional Evidence. In addition, I note Rule 3.14 of the Rules of Procedure requires that the applicant's evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

I find that the Tenant did not serve the Landlord with a copy of the Additional Evidence in accordance with the Act and with Rule 3.14. Therefore, I exclude the Additional Evidence from consideration for the purposes of this application.

#### Preliminary Matter – No One Month Notice Issued

DP testified that the Landlord considered issuing a one month notice to end tenancy for cause, but did not in fact do so. The Tenant also did not provide any evidence to suggest that a one month notice to end tenancy had been issued.

Accordingly, I dismiss the Tenant's claim to dispute a one month notice to end tenancy for cause, without leave to re-apply.

#### Preliminary Matter – Tenancy Has Ended

The parties agreed that the Tenant moved out of the rental unit on March 25, 2022. Based on the parties' testimony, I find that the tenancy ended on that date.

#### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Tenant entitled to a Monetary Order for emergency repairs?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The parties agreed that the Tenant lived at the rental unit since May 2008. The Landlord had a handwritten tenancy agreement with the Tenant's daughter. The Tenant took over the tenancy in 2015. The parties agreed that rent was \$1,500.00 per month plus utilities.

The parties further agreed that rent was due on the first day of each month. The Landlord holds a \$750.00 security deposit in trust for the Tenant.

A copy of the 10 Day Notice is submitted into evidence. The 10 Day Notice is dated March 15, 2022 and has an effective date of March 25, 2022. The 10 Day Notice states that the Tenant failed to pay \$900.00 rent for February and \$1,500.00 rent for March. The Tenant acknowledged she received the 10 Day Notice on March 16, 2022.

DP explained that the Landlord's husband passed away in September 2021, and the Landlord decided to sell the rental unit. DP testified there were verbal conversations with the Tenant about the sale.

The Landlord and DP testified that the Tenant did not pay rent for February and March 2022. The parties agreed that the Landlord and the Tenant met on February 17, 2022. The Tenant testified that on this date, she paid the Landlord \$3,966.00 in cash, which they counted together. The Tenant testified this amount included rent for January and February 2022, as well as \$966.00 for utilities for the previous year. The Landlord testified only \$1,500.00, not \$3,000.00, was received for rent. The Landlord was unsure how much she had received for the utilities, but estimated that it was around \$1,000.00. The Landlord acknowledged that she did not issue a receipt to the Tenant. The Landlord and DP were unsure why the 10 Day Notice states that the Tenant did not pay \$900.00 for February rent.

The Tenant did not dispute that she did not pay rent for March 2022.

The parties agreed that the Tenant moved out on March 25, 2022, which I note is also the effective date of the 10 Day Notice.

The Landlord and DP confirmed that the rental unit has since been sold.

The Tenant argued that she did a lot of work in the rental unit and is requesting compensation from the Landlord. In her initial application materials, the Tenant included a letter which states that the Tenant paid for the following repairs:

- Roof leak
- Washroom repairs
- Cleaning the gutters (\$250.00 x 3 times)
- Cleaning the heaters and vents (\$250.00 x 3 times)
- Faucet replacements

- Replacement for hot water tank (\$1,250.00)
- Washer and dryer
- Replacement for stove
- Fridge replacement
- Mouldy wood in washroom replaced, added tiles, new toilet, and shower (\$1,600.00)

The Tenant wrote that she paid for these repairs even though the Landlord had agreed to cover these costs. The Tenant wrote that “these are what I remember off the top of my head.” I note it is unclear how the Tenant arrived at the figure of \$4,100.00.

In response, DP testified that the Tenant never sent the Landlord any invoices for reimbursement. DP testified the parties had a good relationship; the Landlord did not increase the Tenant’s rent, and it was understood that the Tenant would look after minor repairs. DP testified the Landlord would do any major work such as new roof and furnace. DP emphasized that the Tenant did not send any invoices to the Landlord.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### *1. Is the Landlord entitled to a Monetary Order for unpaid rent?*

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the director dismisses the tenant’s application to dispute the notice or upholds the notice.

Section 52 of the Act states:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,

- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Based on the Landlord's undisputed testimony, I am satisfied on a balance of probabilities that the Tenant did the pay rent due to the Landlord on March 1, 2022. However, I do not find the Landlord to have established that the Tenant owes rent for February 2022. I find the Tenant's recollection of the events on February 17, 2022 to be much clearer than that of the Landlord's. The Landlord was unable to confirm how much the Tenant paid for utilities or why the 10 Day Notice stated that \$900.00 was owing for February rent. In contrast, the Tenant clearly testified that she paid \$3,000.00 on February 17, 2022 for both January and February rent, plus \$966.00 for utilities.

Based on the above, I uphold the Landlord's 10 Day Notice on the basis that the Tenant did not pay rent for the month of March 2022, pro-rated to the end date of the tenancy on March 25, 2022.

Pursuant to section 55(1.1) of the Act, I award the Landlord \$1,209.68 in unpaid rent for March 1, 2022 to March 25, 2022, calculated as  $\$1,500.00 \times 25/31 \text{ days} = \$1,209.68$ .

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$750.00 security damage deposit held by the Landlord in partial satisfaction of the total sum awarded in this hearing.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
March 2022 Rent	\$1,209.68
Less Security Deposit	- \$750.00
<b>Total Monetary Order for Landlord</b>	<b>\$459.68</b>

*2. Is the Tenant entitled to a Monetary Order for emergency repairs?*

Section 33 of the Act states:

**Emergency repairs**

33 (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

(emphasis added)

In this case, I note the Tenant did not submit any invoices or receipts in the evidence which I have admitted for the purposes of this application. The Tenant also has not submitted any evidence to show that she had sent any invoices or receipts to the Landlord for reimbursement. I accept DP's undisputed testimony that the Tenant had not sent any invoices to the Landlord for reimbursement.

Based on the foregoing, I find that the Tenant is not entitled to reimbursement from the Landlord by virtue of section 33(6)(b) of the Act. Accordingly, I decline to award the Tenant any compensation for the cost of emergency repairs.

### Conclusion

The Tenant's application is dismissed without leave to re-apply.

The Landlord is authorized to deduct the full amount of the Tenant's \$750.00 security deposit in partial satisfaction of the total sum awarded in this application.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of \$459.68. 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: June 29, 2022

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Residential Tenancy Branch