



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR, RR, PSF, RP, OLC, FFT / MNRL, OPR, FFL

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$8,540 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent served March 22, 2022 (the “**March Notice**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by two agents (“**GC**” and “**GS**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified he served that the landlord with the notice of dispute resolution package and supporting documentary evidence by dropping it off at the front desk of landlord’s place of business. This location is where the tenant pays his monthly rent. GC stated that the landlord did not receive these documents. Nevertheless, GC stated that the landlord would accept service of the documents.

The GC testified he served that the landlord with the notice of dispute resolution package and supporting documentary evidence via registered mail on June 6, 2022. He testified he sent a second evidence package to the tenant (as response evidence to the tenant's application) on June 6, 2022 as well. The tenant testified that he did not receive either of these packages.

The Canada Post website indicated that notice cards were left at the rental unit for the retrieval.

The tenant testified that he received three registered mail tickets in his mailbox, but that they were not under his name, but were for a neighbour. He testified that his mailbox is on a tree (at the request of Canada Post) so any notice cards in his name may have gotten wet. Additionally, he stated that his ex-wife retrieves mail from the mailbox and may have taken the notice cards made out to him and not told him (he and his ex-wife are not on speaking terms). The tenant stated that he did not dispute that the landlord sent the documents by registered mail.

The tracking slips submitted into evidence by the landlord show the tenant's name and the address of the rental unit.

The tenant testified that he learned of the landlord's application via an automatically generated e-mail from the Residential Tenancy Branch (the "**RTB**").

Based on the evidence presented, I am confident that the landlord sent the required documents to the tenant in compliance with the Act. I am less confident that the tenant received them. I cannot account for the reason why this occurred. It may have been the notices were delivered to the wrong address, that they were damaged by weather, that some third party removed them from the tenant's mailbox, or due to some other reason. However, the Act only requires that the documents are *sent* by registered mail, and not that they are received. Service is deemed to have occurred five days after the mailing took place. This deeming is rebuttable, but the onus is placed on the recipient (in this case the tenant) to prove this is appropriate. I do not find that the tenant has provided sufficient evidence to show that the presumption of service should be rebutted.

In any event, in light of the nature of the application, I was reluctant to adjourn it. The tenant agreed. Accordingly, as a courtesy, I asked the landlord to send the documents to the tenant via email during the hearing. The tenant had difficulties receiving the landlord's full evidence package. I asked the landlord to send the one-page ledger

contained in the package, which would be the focal point of the application. The tenant was able to receive this document.

### **Preliminary Issue – Withdrawal of Portions of Tenant’s Application**

At the outset of the hearing, the tenant stated that he unintentionally applied for relief that he did not, in fact require. He stated that the only relief he required in an order cancelling the Notice. Accordingly, he asked to withdraw all portions of his application except that part and the authorization to recover his filing fee. The GC consented to this withdrawal. Accordingly, I dismiss these portions of the tenant’s application, with leave to reapply.

### **Preliminary Issue – Amendment of Landlord’s Application**

At the hearing the landlord sought to further amend his application to include a claim for June 2022 rent which GC testified remains outstanding.

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord seeks seeking compensation for unpaid rent that has GC alleges has accrued since the landlord first applied for dispute resolution, I find that the increase in the landlord’s monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord’s application be amended to include a claim for June 2022 rent (\$1,140).

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;

- 2) a monetary order for \$10,820;
- 3) recover the filing fee?

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord submitted a copy of a tenancy agreement into evidence between the landlord and the tenant which indicated that tenancy started on October 15, 2009. It indicated that monthly rent of \$1,140 is due at the end of each month and that the tenant did not pay a security deposit. The last page of that agreement was not provided, so I cannot tell if it was signed by the tenant. In any event, the tenant denied that this document was genuine or accurate as to the terms of the tenancy agreement.

The tenant testified that he and his now ex-wife moved into the rental unit in 2012 or 2013 (he could not recall). They entered into a tenancy agreement with the prior owner of the rental unit. In 2015, he testified that the prior owner sold the rental unit to the landlord. At the start of the tenancy, monthly rent was \$1,040. He testified that monthly rent is currently \$1,140 and is payable on the 15<sup>th</sup> day of each month. He paid a security deposit of \$520 at the start of the tenancy. He testified that he never signed any rental agreement with the landlord.

GC stated that he could not testify under oath one way or another as to the authenticity of the tenancy agreement submitted into evidence. He stated that, for the sake of expediency, the landlord would concede that the tenant paid a security deposit of \$520.

GC testified that he believed the landlord has owned the rental unit for over 10 years. He was not aware of who owned it prior to the start of the tenancy.

GC testified that, as of May 31, 2022, the tenant was \$9,680 in arrears. The landlord submitted a ledger into evidence as follows:

Date	Owed	Paid	Balance
------	------	------	---------

31-May-21	\$1,140.00	\$0.00	\$1,140.00
30-Jun-21	\$1,140.00	\$1,000.00	\$1,280.00
31-Jul-21	\$1,140.00	\$1,000.00	\$1,420.00
31-Aug-21	\$1,140.00	\$1,140.00	\$1,420.00
30-Sep-21	\$1,140.00	\$700.00	\$1,860.00
31-Oct-21	\$1,140.00	\$0.00	\$3,000.00
30-Nov-21	\$1,140.00	\$500.00	\$3,640.00
31-Dec-21	\$1,140.00	\$500.00	\$4,280.00
31-Jan-22	\$1,140.00	\$0.00	\$5,420.00
28-Feb-22	\$1,140.00	\$0.00	\$6,560.00
31-Mar-22	\$1,140.00	\$0.00	\$7,700.00
30-Apr-22	\$1,140.00	\$1,000.00	\$7,840.00
31-May-22	\$1,140.00	\$0.00	\$8,980.00
Deduction for Roof Repairs	\$700.00		\$9,680.00
		<b>Total</b>	<b>\$9,680.00</b>

Additionally, GC testified that the tenant failed to pay rent due for June 2022. Currently, he testified that the tenant was \$10,820 in arrears.

The landlord served the tenant multiple 10 Day Notices to End Tenancy, as follows:

- 1) March 22, 2022, specifying arrears of \$6,260 was served personally by GC (the **"March Notice"**)
- 2) May 4, 2022, specifying arrears of \$8,540 was served by registered mail (tracking number on cover of decision) (the **"May Notice"**)
- 3) June 6, 2022, specifying arrears of \$9,680 was served by registered mail (tracking number on cover of decision) (the **"June Notice"**)

The tenant testified that in May 2021, there was a flood in the house, and he had to pump out the water. As such, he deducted the entire month's rent.

The tenant testified that he did not realize that the landlord was seeking to recover rent from 2021. He testified that he understood the eviction related to non-payment of rent from March to August 2020. The basis for this belief was the text at the top of the March Notice which stated:

There are special rules for arrears incurred between March 18, 2020 to August 17, 2020.

The tenant testified that he did not look at the second page of the March Notice, which stated that he owed \$6,260 as of February 28, 2022. He acknowledged that this was his mistake. He argued that he “did not have a chance” to provide evidence which related to his payment of rent which he now understands the landlord is claiming is in arrears. He claimed to have paid the arrears on his credit card.

The tenant conceded that he is behind one month’s rent (June 2022) and is in arrears of \$1,140. He testified that he and the landlord had made a deal that month rent was supposed to be \$1,000 because he does not have use of the basement due to the flood. He does not have any of this in writing and stated that that he and the landlord reached this agreement verbally.

The tenant testified that any time the ledger indicated that he had only paid a portion of monthly rent, that he and the landlord “had a deal” that he could pay reduced rent.

GC testified that the deductions the tenant refers to were addressed in a prior hearing on a different application of the tenant, and that the prior arbitrator dismissed the tenant’s application for compensation in connection with any work done by the tenant.

The tenant disagreed with this characterization. He stated that this application was for the *refund* of money that he paid in rent for the time that repairs were needed, but not undertaken by the landlord.

The decision from this prior hearing was submitted into evidence, in it, the presiding arbitrator wrote:

I dismiss the tenant’s claim for \$6,000 as reimbursement for rent they paid over the time period they allege their requests were ignored [July 2021 to November 2021]. The tenant alternately applied for a rent reduction in this same amount; I dismissed this piece of their application as well. There is insufficient evidence that the landlord was aware of the problems with the unit, and made no repairs or replacement.

The tenant did not prove the value of the loss to them in their claim for \$5,000 for work they completed on gutters. There was a loose approximation of the work involved from the tenant in the hearing; However, for this amount of an award a stricter accounting is necessary. As above, the tenant did not provide evidence to show they made a request for gutter cleaning to the landlord which was ignored. The tenant stated they did this “countless times”; However, when establishing a

value of the true work involved for which they should be fairly compensated, more accurate accounting is necessary. I dismiss this piece of the tenant's claim for these reasons.

Additionally, in the prior decision, the presiding arbitrator wrote:

The tenant provided that they started paying the full amount of rent, at \$1,140, again in October 2021. They maintain that they do not owe any amount of rent outstanding, stating clearly in the hearing: if I pay the service guy, that comes off rent and the landlord knows that."

I understand this to mean that, in the past, the tenant stated that he withheld portions of rent to pay for the costs of service providers to the rental unit.

At the hearing, the tenant testified that he paid rent as follows:

Start of Period	End of Period	Owed	Paid	Balance	Reason for shortfall
15-May-21	14-Jun-21	\$1,140	\$0	\$1,140	took of rent because flood in house
15-Jun-21	14-Jul-21	\$1,140	\$1,000	\$1,280	had deal to pay \$1000 with landlord (because of flood, loss of use of basement)
15-Jul-21	14-Aug-21	\$1,140	\$1,000	\$1,420	had deal to pay \$1000 with landlord (because of flood, loss of use of basement)
15-Aug-21	14-Sep-21	\$1,140	\$1,140	\$1,420	
15-Sep-21	14-Oct-21	\$1,140	\$700	\$1,860	because roof leak and flood; tenant pumped out basement
15-Oct-21	14-Nov-21	\$1,140	\$800	\$2,200	toilet was broken (tenant paid \$400 to plumbing company)
15-Nov-21	14-Dec-21	\$1,140	\$500	\$2,840	deduction for roof leak and flooding
15-Dec-21	14-Jan-22	\$1,140	\$1,000	\$2,980	\$500 cash and \$500 credit for work done
15-Jan-22	14-Feb-22	\$1,140	\$1,000	\$3,120	no laundry machine
15-Feb-22	14-Mar-22	\$1,140	\$1,000	\$3,260	no laundry machine

15-Mar-22	14-Apr-22	\$1,140	\$1,000	\$3,400	no laundry machine
15-Apr-22	14-May-22	\$1,140	\$1,000	\$3,540	none given
15-May-22	14-Jun-22	\$1,140	\$400	\$4,280	\$400 cash, cleaned gutter, deducted balance
15-Jun-22	14-Jul-22	\$1,140	\$0	\$5,420	short on cash
			<b>Total</b>	<b>\$5,420</b>	

The tenant provided the above-mentioned explanations for why he paid less than the \$1,140 owed. He testified that he had a verbal agreement with the landlord for each of these deductions (with the exception of non payment of rent for the period starting July 15 and ending June 14, 2022).

Throughout providing this testimony, the tenant on more than one occasion conflated paying rent with deducting amounts from rent for either work he did or amounts he paid to contractors to repair damage to the rental unit.

### **Analysis**

#### **Tenant's Documentary Evidence**

At the hearing, I declined to adjourn the hearing so as to allow the tenant to submit additional evidence relating to his payment of rent during 2021 and 2022. The tenant received the March Notice, which stated that the arrears sought related to rent owed as of February 28, 2022. As such, I find that the tenant ought to have reasonably known that the March notice is issued pursuant to unpaid rent prior to this date. I do not find it reasonable for the tenant to have been confused by the statement on the March Notice relating to "special rules for arrears incurred between March 18, 2020 to August 17, 2020". I find the tenant has had an opportunity to submit documentary evidence responsive to the relevant issues in this application.

I will adjudicate this dispute based on the documentary evidence submitted by the parties as well as the testimony of the attendees.

### **Notices**

I accept GC's testimony that the landlord served the tenant with each of the three notices to end tenancy as specified above. The tenant has only disputed the March Notice. Notwithstanding this fact, I decline to issue an order of possession based on the

“conclusive presumption” rule set out at section 46(5) of the Act. I find that it would be unreasonable to expect the tenant to dispute the May and June Notices (incurring additional filing fees) after having already disputed the March Notice. I find that the tenant’s disputing of the March Notice to be sufficient to avoid having the tenancy ended by way of the “conclusive presumption” rule.

#### Prior Decision

Based on my review of the prior decision between the parties, I find that that application dealt with whether or not the tenant incurred expenses which he was entitled to be compensated for relating to the repair and maintenance of the rental unit, as well as a refund of rent paid to the landlord, due to inadequate repair of the rental unit.

Much of the tenant’s testimony at the present hearing relating to the reason why he made deductions to the monthly rent (due to inadequate maintenance of the rental unit). I note that, at no point in the prior decision, does the presiding arbitrator state that the tenant failed to pay any rent. Rather he states that the tenant is looking for a retroactive reduction of the amount of rent paid. However, in light of the imprecision of the tenant’s testimony, at this hearing add that the question of whether rent was paid or not was not directly at issue at the prior hearing, I am not confident that the prior decision stands for the proposition that the tenant paid rent in full for the material times.

#### Order of Possession and Monetary Order

At the prior hearing, as with the testimony in this hearing, the tenant failed to provide any corroboration for his testimony that the landlord agreed he could recover any amounts for work he did to the rental unit or for amount he paid contractors to repair the rental unit.

I do not find the tenant’s testimony at this hearing to be particularly credible. His testimony as to the amounts that he actually paid to the landlord was convoluted and difficult to follow. He did not appear to draw any distinction, at times, between amounts which he paid to the landlord, amounts which he believed he was entitled to deduct for deficiencies with the rental unit, and amount which he paid to contractors in lieu of the landlord.

By contrast, I found GC’s testimony to be clear and unequivocal. Where their testimony differs with regards to the payment of rent, I prefer GC’s to that of the tenant’s.

As such, I find that as of the date the March Notice was issued, the tenant was \$6,560 in rental arrears. This amount differs slightly from the amount set out on the March Notice (which was \$6,260). I do not find that this discrepancy is sufficiently large to cause the March Notice to be invalid. Rather, I accept that this was an arithmetical error on the part of the landlord.

I do not find that the tenant paid the full amount of arrears listed on the March Notice within 5 days of receiving it.

The minor deficiency in the amount of arrears owing aside, I find that the March Notice copies with the form and content requirements of section 52 of the Act.

Accordingly, I dismiss the tenant's application to cancel the March Notice, without leave to reapply. I grant the landlord an order of possession. In light of the length of time the tenant has resided at the rental unit, I find it appropriate to make the order of possession effective 15 days after the landlord serves him with a copy of it.

As stated above, I accept GC's testimony as to the amount of arrears owed by the tenant. Accordingly, I order the tenant to pay the landlord \$9,680.

Pursuant to section 72(1) of the Act, as the landlord has been successful in his application, he may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

I dismiss the tenant's application, in its entirety, without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$9,260, representing the following:

Description	Amount
Arrears	\$9,680.00
Filing fee	\$100.00
Security deposit credit	-\$520.00
<b>Total</b>	<b>\$9,260.00</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within fifteen (15) days of being served with a copy of this decision and attached order(s) by the landlord.

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 17, 2022

---

Residential Tenancy Branch