



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**LL: OPM**

**TT: RR, CNC, PSF, CNR**

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord seeks:

- an Order of Possession pursuant to section 55.

The tenant seeks:

- an order to allow the tenant to reduce rent pursuant to section 65;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”). The tenant was assisted by a family member and an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is either party entitled to the relief sought?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in June 2006. The current monthly rent is \$620.00 payable on the first of each month. The rental unit is a suite in a 24-unit building. A copy of the signed tenancy agreement was submitted into evidence. The tenant originally resided in a different unit in the property and was moved into the current unit approximately 6 years ago.

The parties submit that the current rental unit is a converted storage space which has electricity and running water. The tenant submits that the rental unit did not have major appliances such as refrigerators and stoves, no phone lines and no closets or cupboards. The tenant says they were temporarily moved into the rental unit while the landlord was performing renovations on their original unit but were never allowed back into their suite.

The tenant now seeks a retroactive rent reduction of \$21,600.00 and an order that the landlord provide services or facilities.

The landlord testified that the current rental unit has been deemed to not meet municipal standards and they have been ordered to end the tenancy by the municipality. The landlord issued the 1 Month Notice dated April 29, 2022 which was served on the tenant on May 7, 2022. The reason provided on the notice for the tenancy to end is that the rental unit must be vacated to comply with a government order.

The landlord testified that they signed a Mutual Agreement to End Tenancy with the tenant providing an end of tenancy date of May 31, 2022. The parties were unable to recall the date the Mutual Agreement was entered.

The tenant submits that they are illiterate and did not understand the nature of the document nor the implication of signing a binding document. The tenant submitted a letter from their physician attesting to their illiteracy.

The landlord testified that they have received monthly rent payments from the tenant but have subsequently returned these amounts. The landlord issued a 10 Day Notice dated July 14, 2022 for unpaid rent of \$1,860.00. The landlord says they have refused to accept payment from the tenant and are not seeking a monetary award for the arrear.

### Analysis

Section 47(4) of the Act provides that a tenant may make an application to dispute a notice to end tenancy for cause within 10 days of receiving the notice. In the present case the parties agree the tenant was served with the 1 Month Notice of April 29, 2022 on May 7, 2022 and they filed their application for dispute on May 16, 2022. I therefore find the tenant was within the statutory timeline to file their application.

Section 46(4) provides that a tenant may file an application to dispute a notice to end tenancy for non-payment of rent within 5 days of the date of receipt of the notice. The parties agree the 10 Day Notice of July 14, 2022 was received on that date and the tenant filed their amendment to the application to dispute the notice on July 18, 2022. Therefore, I find the tenant was within the timeline to dispute the 10 Day Notice.

When a tenant files an application to dispute a notice to end tenancy the onus lies with the landlord to demonstrate, on a balance of probabilities, the reasons for the notice.

I find the landlord has provided insufficient evidence to show the reasons for either the 1 Month or 10 Day Notices. The landlord made reference to municipal orders requiring the rental unit be vacated but provided no documentary evidence and some general testimony about what they have been told by the municipal agencies. I find the evidence of the landlord to be vague, not supported in independent documentary materials and of limited probative value. I am not satisfied that there is a basis for the tenancy to end based on the weak evidence of the landlord.

Similarly, I accept the undisputed evidence of the landlord that they received payment of the monthly rent from the tenant and subsequently returned the amount paid and

refused further payments. I find that the landlord has actively refused payment of rent from the tenant and there is no basis for a notice to end tenancy for unpaid rent.

I find the landlord has not established the basis for either the 1 Month Notice of April 29, 2022 or the 10 Day Notice of July 14, 2022. Accordingly, both notices are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlord submits that the parties have entered a Mutual Agreement to End this Tenancy and submitted the signed agreement into evidence. The tenant submits that they are illiterate, or limited cognitive capacity and could not understand the document signed nor its implications.

I am satisfied with the evidence of the tenant that they were not able to comprehend the nature of the document they signed. I note that pursuant to both the *Adult Guardianship Act* and *Representation Agreement Act* an adult is presumed to be capable of making decisions about their personal care, health care and legal affairs until the contrary is demonstrated. I am not making a finding of the capacity of the tenant, I find that is beyond the authority of the Branch. What I do find is that there is sufficient evidence before me that the tenant did not comprehend the meaning of the Mutual Agreement they signed.

I am satisfied based on the submission of the tenant, the documentary evidence by way of the physician's report and the landlord's testimony about the circumstances when the agreement was signed that the tenant was not aware of the nature of the document they were presented. I find the tenant provided their signature without knowledge of the document and as such find the Mutual Agreement is of no force or effect.

The tenant seeks an order for the landlord to provide services and facilities as well as an order allowing a reduction in the rent for the tenancy. I am not satisfied, based on the totality of the evidence before me, that the tenant has established their full claim. The tenant seeks a monetary award of \$21,600.00, the equivalent of \$300.00 reduction of monthly rent for a period of 72 months, or 6 years.

While I accept that the current rental unit occupied is different than the one initially provided under the tenancy agreement, I am not satisfied with the evidence that there are services or facilities unavailable in the current suite. The parties gave vague testimony that this current unit was once a storage facility but the undisputed evidence

before me is that it has been connected to electricity and water including bathroom facilities. I find the testimony of the tenant's family member and their vague description provided in their application to be insufficient to establish on a balance of probabilities that the tenant is without services and facilities that would give rise to an order to the landlord and a monetary award. Consequently, I dismiss this portion of the tenant's application.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application to cancel the 1 Month Notice and 10 Day Notice are granted. Those notices are of no further force or effect.

The balance of the tenant's application is dismissed with leave to reapply.

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 13, 2022

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Residential Tenancy Branch