



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**CNE, FFT**  
**CNR, RP, OLC, FFT**

**OPC, FFL**  
**OPR-DR, MNR-DR, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with two sets of applications filed by both the landlord and the tenant pursuant the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a notice to end tenancy for end of employment, pursuant to sections 48 and 55;
- Authorization to recover the filing fee from the other party pursuant to section 72
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee from the other party pursuant to section 72
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- Authorization to recover the filing fee from the other party pursuant to section 72

The tenant OH attended the hearing and the landlord was represented at the hearing by its counsel, GH. Both parties acknowledged receipt of each of the others' Notices of Dispute Resolution Proceedings. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

#### Preliminary Issue

Both parties sought additional claims not identified in their original applications during the hearing. The landlord sought to recover compensation for damage to the rental unit and outstanding fines levied by the strata corporation.

The tenant sought a rent reduction due to deficiencies with the tenancy.

I advised both parties that these issues were not identified in their respective applications for dispute resolution. Pursuant to Rule 6.2 of the Residential Tenancy Branch Rules of Procedure, the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. Consequently, I declined to rule on those additional issues. The parties were advised that procedural fairness requires that the particulars of those claims must be exchanged in subsequent applications for dispute resolution if they choose to file them.

#### Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of their dispute.

1. The parties mutually agree to end the tenancy at 1:00 p.m. on December 31, 2022 by which time the tenants and any other occupants will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.
3. The parties will attend the rental unit at 1:00 p.m. on December 31, 2022 to conduct a move-out condition inspection report.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to this aspect of applications before me.

The landlord submits that the tenant failed to pay rent for the months of September, (\$4,000.00) October, November and December 2022. (\$4,060.00 x 3). The tenant acknowledges rent was increased in accordance with a notice of rent increase he received, and he did not pay rent for these 4 months. The tenant testified that there were deficiencies with the tenancy and that he should not be required to pay full rent for these months. I advised the tenant that he may file another application seeking such compensation and that this issue would be determined at a later date if he chooses to file such an application. The tenant acknowledged he understood.

Section 26 of the Act states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

I find the tenant did not have any right to deduct any portion of the rent. I therefore order that the tenant is to pay the outstanding arrears from September 1, 2022 to December 31, 2022 [ $\$4,000.00 + (\$4,060.00 \times 3) = \$16,180.00$ ].

As this tenancy is ending, and the parties will no longer be bound by a landlord/tenant relationship, I dismiss without leave to reapply the tenant's applications seeking an order that the landlord do repairs to the rental unit and that the landlord comply with the Act.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, neither party's filing fee will not be recovered.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on December 31, 2022, should the landlord be required to do so.

I award the landlord a monetary order in the amount of \$16,180.00.

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: December 23, 2022

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Residential Tenancy Branch