



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant's application \*\*\*\*90874: CNR, MNRT, LRE, OLC  
Landlord's application \*\*\*\*92060: OPR-DR, MNR-DR, FFL  
Tenant's application: \*\*\*\*91653: CNC-MT, LRE, OLC

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application \*\*\*\*90874 pursuant to the Act is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities received on November 03, 2022 (the 10 Day Notice), pursuant to section 46;
- a monetary order for the cost of emergency repairs, under sections 33 and 67;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

The landlord's application \*\*\*\*92060 pursuant to the Act is for:

- an order of possession under the 10 Day Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee, under section 72.

The tenant's application \*\*\*\*91653 pursuant to the Act is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service of tenant's application \*\*\*\*90874

Both parties agreed the tenant served and the landlord received the notice of hearing and the landlord had enough time to review it.

Based on the undisputed testimony, I find the tenant served the notice of hearing in accordance with section 89(1) of the Act.

Both parties agreed the tenant moved out on February 28, 2023.

The application for cancellation of the 10 Day Notice, an order to restrict or suspend the landlord's right of entry, and an order for the landlord to comply with the Act is moot, since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for cancellation of the 10 Day Notice, an order to restrict or suspend the landlord's right of entry, and an order for the landlord to comply with the Act.

Preliminary Issue – Service of landlord's application \*\*\*\*92060

Both parties agreed the landlord served the notice of hearing and the evidence (the materials) and the tenant received the materials. The tenant affirmed he had enough time to review the materials.

Based on the undisputed testimony, I find the landlord served the notice of hearing in accordance with section 89(1) of the Act.

The application for an order of possession is moot, since the tenancy has ended and the tenant left the rental unit.

Per section 62(4)(b), I dismiss the landlord's application for an order of possession.

#### Preliminary Issue – Tenant's application \*\*\*\*91653

The tenant's application is entirely moot, since the tenancy has ended and the tenant left the rental unit.

Per section 62(4)(b), I dismiss the tenant's application in its entirety.

#### Preliminary Issue – Amendment of the monetary claim for unpaid rent

At the hearing, the landlord sought to amend his application for \$995.00 in unpaid rent to include an additional \$2,985.00 for the unpaid rent of December 2022, January and February 2023.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$3,980.00.

#### Issues to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to an authorization to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out

below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on April 4, 2022 and ended on February 28, 2023. Monthly rent was \$995.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$500.00.

The tenant did not provide his forwarding address.

Both parties confirmed during the hearing their current addresses for service. The addresses are recorded on the cover page of this decision.

The landlord stated the tenant did not pay rent due on November 01, 2022. The tenant testified he paid rent due on November 01, 2022. Later the tenant said he is not sure if he paid this rent.

The tenant confirmed receipt of the 10 Day Notice. The landlord submitted a copy of the 10 Day Notice into evidence. It indicates the tenant did not pay rent in the amount of \$995.00 due on November 01, 2022. The effective date was November 12, 2022.

The tenant tried to contact his mother during the hearing to obtain testimony about the payment of rent. The tenant was not able to contact his mother.

The landlord verified his bank account during the hearing and confirmed that he did not receive any payment from the tenant in November 2022.

Both parties agreed the tenant did not pay rent for December 2022, January and February 2023 in the monthly amount of \$995.00.

The tenant affirmed he did not pay rent in December 2022, January and February 2023 because the landlord intentionally shut off the heat and disconnected the electricity in December 2022.

The landlord submitted into evidence a monetary order worksheet indicating the tenant did not pay rent in November 2022.

The tenant is seeking \$200.00 per month for December 2022, January and February 2023 as compensation for the cost of emergency repairs, as the tenant did not have heat and electricity in the rental unit.

The tenant stated he did not pay for emergency repairs, but he purchased an electric heater in the amount of \$70.00. The tenant currently has the electric heater.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

### Emergency Repairs

Section 33 of the Act states:

- (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.
- [...]
- (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.
- [...]
- (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.

The tenant applied for a monetary compensation for the cost of emergency repairs, per section 33 of the Act. I accept the tenant's testimony that he did not pay for emergency repairs but purchased an electric heater.

I find that purchasing an electric heater is not emergency repairs, as it does not repair the rental unit's heating system.

The tenant is at liberty to submit an application for monetary compensation for losses during the tenancy, including loss of quiet enjoyment and losses related to purchasing an electric heater.

I dismiss the tenant's claim for compensation for the cost of emergency repairs.

#### Unpaid rent

I accept the uncontested testimony that the tenant agreed to pay monthly rent in the amount of \$995.00 on the first day of the month.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

The tenant's testimony about paying November 2022 rent was not convincing, as the tenant is not sure that he paid rent in November 2022. The landlord's testimony about November 2022 rent was convincing.

Based on the landlord's convincing testimony, the 10 Day Notice and the monetary order worksheet, I find the tenant did not pay rent in November 2022 in the amount of \$995.00.

I accept the uncontested testimony that the tenant did not pay rent in December 2022, January and February 2023 in the monthly amount of \$995.00.

The Act allows the tenant to deduct rent on four occasions:

1. Section 19(2): When a landlord collects a security deposit or pet damage deposit that is above the permitted amount.
2. Section 33(7): When the tenant pays for emergency repairs.

3. Section 43(5): When a landlord imposes a rent increase that is above the amount allowed by law.
4. Section 51(1.1): When the landlord issues a notice to end tenancy under section 49 of the Act.

As noted in the topic 'emergency repairs', the tenant did not pay for emergency repairs.

Pursuant to section 26(1) of the Act, I award the landlord \$3,980.00 for unpaid rent in November and December 2022, January and February 2023 (\$995.00 x 4 months).

#### Filing fee and deposit

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$500.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent for November and December 2022, January and February 2023 (\$995.00 x 4 months)	3,980.00
Filing fee	100.00
Subtotal	4,080.00
Deposit (subtract)	500.00
<b>Total:</b>	<b>3,580.00</b>

#### Conclusion

Pursuant to sections 26 and 72 of the Act, I authorize the landlord to retain the \$500.00 deposit and award the landlord \$3,580.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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: March 16, 2023

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Residential Tenancy Branch