



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR, RR, RP, PSF, LRE, OLC, FFT**

### **Introduction**

This hearing was set to deal with a tenant's application for dispute resolution. The tenants sought several remedies including:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated November 11, 2022;
- Repair orders;
- Orders for the landlord to provide services or facilities required by law or the tenancy agreement;
- Orders for the landlord to comply with the Act, regulations or tenancy agreement;
- Authorization to reduce rent payable; and
- Recovery of the filing fee.

The tenant appeared for the hearing and was affirmed. There was no appearance on part of the landlord. Since the landlord did not appear, I explored service of the hearing materials upon the landlord.

The tenant testified that he sent the proceeding package and evidence to the landlord via registered mail on November 24, 2022. The tenant orally provided the registered mail tracking number (recorded by me on the cover page of this decision). The tenant testified that the registered mail was returned with the notation that this person no longer resides at that address. The tenant testified that the mailing address he used was the only service address the landlord has provided to them and it appears on the tenancy agreement signed on September 5, 2022 and the 10 Day Notice served on November 11, 2022. The tenant also stated that the landlord only communicates by text message and that he has asked for the landlord's email address but he will not provide it.

Section 90 of the Act deems a party to be served five days after mailing, even if the party refuses to accept or pick up their mail. Upon review of the tenancy agreement and the 10 Day Notice, I am satisfied the tenants sent the registered mail to the service address provided to the tenants by the landlord. Therefore, I deemed the landlord sufficiently served despite the notation on the registered mail envelope.

I noted that the tenant had provided a copy of the e-transfer receipt for the November 2022 rent payment and there is an email address for the landlord on the e-transfer receipt. **Effective immediately, I authorize the tenants to serve the landlord by using the email address that the landlord uses to receive rent from the tenants.**

The tenant confirmed that they continue to occupy the rental unit and the tenants seek to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 10 Day Notice pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

In the hearing time that remained I also heard and decided matters pertaining to the 10 Day Notice and issues raised in the application that seriously impact health and safety of the tenants, as identified by the tenant. The remainder of the issues were dismissed with leave to reapply.

On another procedural note, I amended the application to change the spelling of the rental unit street name to match the tenancy agreement and 10 Day Notice.

Issue(s) to be Decided

1. Should the 10 Day notice be upheld or cancelled?
2. Is it necessary and appropriate to order the landlord to provide services or facilities?
3. Is it necessary and appropriate to issue repair orders?
4. Are the tenants authorized to make deductions from rent payable?
5. Award of the filing fee.

Background and Evidence

The parties entered into a tenancy agreement set to start on September 15, 2022 for a one year fixed term set to expire on September 14, 2023 and then continue on a month to month basis there after. The tenants paid a security deposit of \$1250.00 and are required to pay rent of \$2500.00 on the first day of every month.

The tenancy agreement provides that water is included in the rent payment but hydro is not.

**10 Day Notice**

On November 11, 2022 the landlord served the tenants with a 10 Day Notice indicting rent of \$2500.00 was outstanding as of November 1, 2022 and \$110.99 was owed for utilities that were demanded on October 23, 2022.

The tenants paid the \$2500.00 rent by e-transfer on November 15, 2022.

The tenants do not agree that they owe the landlord utilities in the amount demanded. The landlord had sent them a screen shot of a hydro payment in the amount of \$110.59 that has a billing date of September 7, 2022 which pre-dates the start of their tenancy. As such, the tenants submit that the amount demanded for the hydro is for a period of time before they moved in and is not payable by them.

**Services or facilities -- Water**

The tenant submitted that the property has a well but the well water appears rusty and has an oily sheen. The tenant seeks to have the water tested and until such time the water is shown to be potable the tenant seeks to recover the cost of purchasing drinking

water. The tenant was willing to have the well water tested and agreed to share the results with the landlord.

The tenant stated there is a water holding tank on the property. The landlord told him to have that filled at the tenant's expense; however, the tenant could not find a company to deliver drinking water to the property and the tenants submit it is not their obligation to pay for the delivery of potable water since it is included in their rent.

### **Repairs necessary for health and safety reasons**

#### **1. Back deck**

The tenant submitted that the back deck is missing and that there is a back door that leads to a four foot drop off. The tenant seeks to have the back deck installed for safety reasons. The tenant indicated that there was discussion between the tenant and the landlord concerning construction of the deck but it was unclear who was to purchase supplies and the tenant's vehicle is unable to transport the lumber.

#### **2. Front stairs and railing**

The tenant submitted that the front stairs and railing are rotten and unsafe.

#### **3. Chewed electrical cord**

The tenant submitted that there is an electrical cord near the electrical panel that has been chewed and the tenants have observed flickering lights and the oven shuts off at times.

The tenant stated that he has brought all of the above described issues to the landlord's attention. The tenants provided photographs of the above described issues.

### **Analysis**

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

### **10 Day Notice**

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Where a tenant does not pay rent when due, the landlord is at liberty to serve the tenant with a 10 Day Notice. Upon receipt of a 10 Day Notice, a tenant has five days to either pay the outstanding amount(s) or file an Application for Dispute Resolution to dispute the notice.

In this case, the tenants were served with a 10 Day Notice on November 11, 2022. The tenant has presented evidence to demonstrate he paid the outstanding rent on November 15, 2022, via etransfer, and since this was within five days of receiving the 10 Day Notice, I am satisfied the outstanding rent was satisfied within time and the tenancy does not end due to unpaid rent.

With respect to utilities, section 46(6) of the Act provides that a landlord may include unpaid utilities on a 10 Day Notice so long as the landlord made the demand for payment, in writing, at least 30 days prior to the 10 Day Notice and the tenant did not pay the utilities demanded. In this case, the 10 Day Notice indicates that a demand was made on October 23, 2022 which is not at least 30 days before issuance of the 10 Day Notice. Further, sending a text message image of a hydro payment is not proper service of a written demand. Finally, the screenshot sent by the landlord reflects a hydro billing date of September 7, 2022 which predates the start of the tenancy and I find that hydro bill is not payable by the tenants. Therefore, I find the landlord was not entitled to include hydro on the 10 Day notice issued on November 11, 2022 and I cancel the 10 Day Notice.

### **Service or facility -- Water**

The tenancy agreement provides that water is included in rent. I heard there is a well and a water tank that can hold deliveries of water to the property. Accordingly, I find water is a “service or facility” to be provided to the tenants by the landlord under their tenancy agreement at the landlord’s expense.

A landlord cannot terminate a service or facility that is essential to the tenant’s use of the rental unit as living accommodation or is a material term of the tenancy agreement. If the service or facility is not essential or material, the landlord may only terminate the service in a manner that complies with section 27 of the Act . Section 27 of the Act requires that a termination of service or facility requires the landlord to use the approved

form, give the tenant at least 30 days of advance notice; and, a rent reduction for the value of the terminated service or facility.

I was not provided any evidence to suggest the landlord terminated the water service in a manner that complies with section 27. Therefore, I find the landlord remains obligated to provide water to the tenants at the landlord's expense.

I have read the tenancy agreement in its entirety and there is no disclosure that the well water is not potable. As such, I find a reasonable person would expect that the water provided by the well would be potable and if it is not potable that the landlord would supply potable water by way delivery of water to the water storage tank on the property.

The tenant described the well water as being discoloured and with an oily sheen. I find the tenant's request for a test of the well water to be reasonable to determine whether it is potable. The tenant indicated the landlord is not responsive to the tenant's requests for repairs and the tenant was willing to have the test performed. Therefore, I authorize and order the tenant to have the well water tested within the next 30 days.

The tenant is further ordered to share the test results with the landlord when they are received. These results may be shared by sending them to the landlord via email.

The tenant is also authorized to deduct the cost of the water test from rent payable by providing the landlord a copy of the receipt for the water test.

The tenant testified that they have been purchasing bulk water at grocery stores in the absence of the well water being shown to be potable or bulk delivery to the water storage tank. Since it is the landlord's obligation to supply the tenants with potable water, I authorize the tenants to deduct the cost of water purchases from rent payable until such time the well water test results show the well water is potable or the landlord provides potable water by delivery to the water storage tank, whichever happens first. To deduct the cost of water purchases from rent, the tenant must provide the landlord with receipts for water purchases.

## **Repairs**

Section 32 of the Act provides for a landlord's and a tenant's obligation to repair and maintain a property. The landlord's obligations are as follows:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have heard the rental unit is in need of repairs including installation of a back deck, replacement of rotting front steps and handrail, and repair of chewed electrical wires near the electrical panel. I find all of these repairs are necessary for safe use of the rental unit. I also heard evidence that the landlord is aware of the need for all of these repairs and they remain outstanding. Therefore, I issue the following repair orders to the landlord:

I order the landlord, within 30 days of the date of this decision, to:

- Install a back deck or landing with stairs at the back door of the rental unit;
- Replace any and all rotten or rotting front steps and handrail; and,
- Repair or replace the electrical wiring that has been chewed and/or damaged.

Should the landlord not comply with the above repair orders, the tenants are at liberty to file another Application for Dispute Resolution to seek further remedy including compensation and rent reduction.

### **Filing fee**

The tenant's application had merit and I award the tenants recovery of the \$100.00 filing fee they paid for this application from the landlord. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award.

### **Conclusion**

The utilities reflected on the 10 Day Notice are not owing by the tenants and the 10 Day Notice is cancelled.

The tenants are ordered and authorized to have the well water tested and recover the cost of the test from the landlord by deducting it from rent.

The landlord has been ordered to make repairs within 30 days for: a back deck, front steps and handrail, and chewed electrical wiring.

The tenants have been authorized to make deductions from rent payable for: the well water test, water purchases until such time the well water test reveals the water is potable or the landlord has potable water delivered to the property, and the filing fee. To make deductions from rent, the tenants must provide the landlord with copies of receipts to support the deduction(s) made. This decision shall serve as the authority to deduct the filing fee paid for this application.

The tenants are authorized to serve the landlord by email, using the email address used to send rent payments.

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 28, 2023

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Residential Tenancy Branch