



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, MNDCT, RR, RP, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On February 26, 2023, the tenant applied for:

- an order cancelling a One Month Notice to End Tenancy for Cause;
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit or property, having contacted the landlord in writing;
- an order for the landlord to comply with the Act, regulation, or the tenancy agreement; and
- recovery of the filing fee.

On March 2, 2023 the tenant amended his application and applied for:

- compensation for monetary loss or other money owed.

The hearing was attended by the tenant and his associate, but not the landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the landlord by registered mail on March 2, 2023, and submitted a tracking number as recorded on the cover page of the decision. I find the tenant's NDRP and evidence served on the landlord in accordance with section 89 of the Act, and deem them received by the landlord on March 7, 2023 pursuant to section 90 of the Act.

The tenant testified he served his amendment on the landlord by registered mail on March 4, 2023, and submitted a tracking number as recorded on the cover page. I find

the tenant's amendment served on the landlord in accordance with section 89 of the Act, and deem it received by the landlord on March 9, 2023 pursuant to section 90 of the Act.

### Preliminary matter

The tenant's amendment states he is seeking compensation in the amount of \$2,700.00 to recover \$450.00 a month for loss of use of the kitchen and second bedroom. The tenant confirmed this claim is a duplication of his claim to reduce rent by \$450.00. Therefore, I decline to amend the tenant's application to add the claim for \$2,700.00 in compensation.

### Issues to be Decided

- 1) Is the tenant entitled to an order cancelling a One Month Notice to End Tenancy for Cause? If not, is the landlord entitled to an order of possession?
- 2) Is the tenant entitled to an order to reduce rent for repairs, services, or facilities agreed upon but not provided, in the amount of \$450.00 a month?
- 3) Is the tenant entitled to an order for repairs made to the unit?
- 4) Is the tenant entitled to an order for the landlord to comply with the Act?
- 5) Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began May 1, 2013; rent is \$900.00, due on the first of the month; and the tenant paid a security deposit for \$325.00, which the landlord still holds.

The tenant testified that the landlord served him with one month's notice to end the tenancy. Submitted as evidence is a document dated January 12, 2023, which states that the tenant must vacate the premises within 30 days because of "restorations due to unforeseen flooding." The tenant confirmed that the landlord did not serve him with a completed RTB-33 One Month Notice to End Tenancy for Cause form.

The tenant testified that he is seeking a rent reduction of \$450.00 a month because after a flood in the adjacent unit in January 2023, the landlord removed the tenant's kitchen cabinets, flooring, and opened up the walls.

A letter dated February 21, 2023, from the tenant to the landlord's husband is submitted as evidence. It supports the tenant's testimony on the condition of his unit, states that repairs have not been made for four weeks, and states that the landlord is in contravention of section 32(1) of the Act, which requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant has submitted photos as evidence, which show that the kitchen cabinets and flooring have been removed, along with drywall from the bottom portion of the wall. The tenant testified the unit is still in the same condition as depicted in the photos.

The tenant testified he is not able to cook because all his dishes are dirty as the landlord put them on the floor of the unit, and that "everything is all over the place." The tenant also testified that as the walls are open, portions of the drywall having been removed, he needs to leave the kitchen and bathroom fans on all day because construction work upstairs produces copious dust. The tenant testified he is able to use the kitchen counter and sink.

The tenant testified that he is not able to use the second bedroom because it is now filled with possessions that had to be moved during the repairs, which have now stalled.

The tenant seeks for the landlord to return the unit to its livable state as at the beginning of the tenancy, including providing kitchen cabinets, flooring, and replacing the drywall.

The tenant testified that he has worked for 25 years in the restoration business and is knowledgeable about flood damage. The tenant submitted that the flood only got the carpet wet, and the damage was cosmetic only and did not require removal of drywall or the kitchen cabinets.

The tenant submitted that as the landlord could get much more rent for the unit, the landlord is trying to drive the tenant out of the unit.

Regarding the tenant's claim for the landlord to comply with the Act, Regulation, or tenancy agreement, the tenant testified he seeks for the landlord to provide proper notice to end tenancy.

## Analysis

### *Dispute of notice to end tenancy*

The tenant testified that the landlord served him with one month's notice to end the tenancy. The tenant testified that the landlord did not serve him with a completed RTB-33 One Month Notice to End Tenancy for Cause form. Section 52(e) of the Act states that in order to be effective, a notice to end tenancy given by a landlord must be in the approved form. That form is the RTB-33 One Month Notice to End Tenancy for Cause. I accept the tenant's affirmed undisputed testimony that he was not served a notice to end tenancy as required by the Act. I find the notice served by the landlord is without force or effect, and the tenancy will continue until it is ended in accordance with the Act.

### *Rent reduction and repairs*

The tenant seeks a rent reduction of \$450.00 a month because the landlord began repairs at the end of January 2023, following a flood, and has not completed them. The tenant testified he is unable to use his kitchen or second bedroom as the kitchen cabinets and flooring have been removed and his possessions are being stored in the second bedroom due to the repairs. The tenant testified he is not able to cook because all his dishes are dirty and the kitchen is in disarray. The tenant testified he is able to use the kitchen counter and sink. The tenant testified that because the landlord has removed portions of the drywall, and construction is being done upstairs, there is a lot of dust entering the rental unit daily.

Section 27 of the Act states that a landlord may terminate or restrict a service or facility if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction.

I accept the tenant's testimony foregoing and find the landlord therefore was obligated under section 27 of the Act to reduce the rent accordingly.

Policy Guideline 22 states that where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant. Given the significance of the impact of the changes the landlord has made to the unit, and the disruption and inconvenience to the tenant, I find the tenant's use of the rental unit is greatly affected, and the tenant is entitled to a rent reduction.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment of the rental unit.

Policy Guideline 6 states: “A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.”

Based on the tenant’s forementioned testimony, I also find the tenant’s right to quiet enjoyment was breached, per section 28 of the Act.

Therefore, I find the tenant is entitled to a 33 percent rent reduction for loss of use and loss of quiet enjoyment for February and March 2023, in the amount of \$594.00, calculated as follows:

Rent paid for February and March 2023:

$$\$900.00 \times 2 = \$1,800.00$$

Thirty-three percent of \$1,800.00:

$$\$1,800.00 \times 0.33 = \$594.00$$

I find the tenant is entitled to a monetary award of **\$594.00**.

My reasoning for the 33 percent reduction is as follows. I find there was an overall diminishment in the value of the tenancy as a result of the breaches, but that the tenant still has partial use of the kitchen, and use of the bathroom and one bedroom — the most important areas of the rental unit. The tenant testified he is able to use the kitchen counter and sink, and did not testify that he is unable to use the stove.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The landlord is ordered to return the unit to its livable state as at the beginning of the tenancy, including providing kitchen cabinets, flooring, and replacing the drywall, as required by section 32 of the Act. This work must be completed no later than May 31, 2023.

I order that the tenant may reduce their rent by \$297.00 (33 percent of \$900.00) for each additional month until the landlord has returned the unit to its livable state as at the beginning of the tenancy, including as particularized above.

*Order for the landlord to comply*

The tenant testified that the landlord served them with notice to end tenancy that was not on the RTB One Month Notice form. The tenant seeks for the landlord to provide proper notice to end tenancy. I order the landlord to comply with the Act when providing notice to end tenancy, including section 52:

**Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

*Filing fee*

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a total monetary award in the amount of **\$694.00**, comprising \$594.00 for the preceding monetary award and \$100.00 for the filing fee. The tenant may withhold \$694.00 from one month's future rent.

Conclusion

The tenant's claim to cancel the One Month Notice is granted; this tenancy will continue until it is ended in accordance with the Act.

The landlord is ordered to return the unit to its livable state as at the beginning of the tenancy, including providing kitchen cabinets, flooring, and replacing the drywall, as required by section 32 of the Act. This work must be completed no later than May 31, 2023.

The tenant may withhold \$694.00 from one month's future rent.

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: April 26, 2023

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Residential Tenancy Branch