



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      CNR-MT, MNDCT, RR, RP, OPR, MNR, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to dispute three 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notices") issued on March 17, 2023;
2. For compensation or other money owed;
3. To be allowed to reduce rent for repairs;
4. To have repairs made to the rental unit; and
5. To recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notices. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notices and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed with leave to reapply.

As the landlord's application is directly related to the Notices and I must consider the requirements of section 55 of the Act. Therefore, I will consider the landlord's application for an order of possession and a monetary order for unpaid rent.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. I will only consider evidence related to the Notice.

Although I heard testimony on the reasons the tenant filed their application late; however, as both the landlord's and the tenant's legal counsel were prepared to deal with this issue at a prior hearing held on April 3, 2023, which the Arbitrator would not consider as the application was not properly amended. I find it is reasonable to allow the tenant more time to dispute the Notice and deal with the merit of the Notices.

#### Issue(s) to be Decided

Should the Notices be cancelled?

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

Is the landlord entitled to an order of possession?

#### Background and Evidence

The tenancy began on May 15, 2022. Rent in the amount of \$3,600.00 was payable on the 15th of each month. A security deposit of \$1,800.00 and a pet damage deposit of \$500.00 were paid by the tenant.

The tenant confirmed in their application that they received the Notices on March 24, 2023. Filed in evidence is a copy of the Notices, that complies with section 52 of the Act.

The tenant testified that since their tenancy commenced here have been issues with emergency repairs, such as a rat, and skunk issue, which they deducted the amount of \$1,609.65 from August 2022, rent and the yard was overgrown and there was missing lightbulbs which they deducted \$934.50 and \$100.00 from September 2023 with the consent of the landlord to recover these costs.

The tenant testified that there are other emergency repairs that have not been completed as they do not have the funds, nor are they owed for any other additional expenses for completing emergency repairs. The tenant stated they have not paid the

landlord any rent for December 2022, January, February, March, April and May 2023 because they feel they are entitled to a rent reduction and other relief under the Act.

Legal counsel for the tenant stated that the tenant was to pay all rent to them in trust and they are holding the amount of \$10,800.00, as they were seeking orders pursuant to section 62 and 65 of the Act.

Counsel or the landlord stated that the tenant has no authority under the Act, not to have paid rent for the past six months. Counsel seeks the funds in trust of \$10,800.00 held by the tenant's legal counsel be immediately released to the landlord.

The landlord seeks an order of possession and a monetary order for unpaid rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires 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. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent as follows:

1. To recover an illegal rent increase, pursuant to section 43(5) of the Act;
2. For a security deposit or pet damage deposit that is over the allowable amount, pursuant to section 19 of the Act;
3. For the cost occurred to complete an emergency repair, pursuant to section 33 of the Act; or
4. An order from an Arbitrator allowing a deduction or with written permission of the landlord.

In this case, 1, 2, 3, 4 as outline above do not apply in this matter as there has not been an illegal rent increase, or any over payment of a security deposit or pet damage

deposit and there is **no prior order** from the director authorizing the tenant to deduct an amount from the rent an no consent of the landlord. The only ground under the Act for the tenant to withhold rent is to recover the cost of an emergency repair, which are defined in the Act.

At the hearing, the tenant testified that they have recovered all cost of emergency repairs by deducting these amounts from previous rent in August and September 2022. The tenant did not have any grounds under the Act to withhold rent for December 2022, January, February, March, April and May 2023 totalling the amount of \$21,600.00.

While I accept there may be other issues relating to the tenancy; however, the tenant did not have the authority under the Act to deduct any portion from the rent. Section 26 of the Act clearly states rent must be paid whether or not the landlord has breached the Act. The only exceptions to this are for the limited reasons noted above.

In this matter, the tenant testified that there was no outstanding amount owed for the tenant completing emergency repairs when they started to withhold the rent and when they received the Notice. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. They must have an order from an Arbitrator authorizing them an amount to be deducted from the rent, if any, such as a rent reduction or other relief. I find the tenant breached section 26 of the Act, when they failed to pay rent for the months previously noted. Therefore, I dismiss the tenant's application without leave to reapply.

While I accept the tenant paid to their legal counsel the sum of \$10,800.00 for unpaid rent for December 2022, January and February 2023; however, that is not in compliance with the Act. Nor is it in compliance of the Notices received on March 17, 2023, as rent was required to be paid to the landlord within 5 days of receiving the Notices or dispute the Notices showing they had the authority under the Act to withhold the rent, which clearly the tenant had no authority to do so, as they admitted they have been reimbursed for what they have determined were emergency repairs.

Furthermore, section 62 and 65 of the Act is not intended for legal counsel to hold the rent, contrary to the Act. Although I accept this was on the instructions of their client. These sections of the Act are only intended for the Arbitrator to make findings of fact and make orders and if necessary order the rent to be paid to the director, not legal counsel.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the landlord is entitled to a monetary order, pursuant to section 55 of the Act for payment of unpaid rent in the amount of **\$21,600.00**. As legal counsel for the tenant is holding the amount of **\$10,800.00**, I order the tenant's legal counsel to immediately released that amount to the landlord's legal counsel in partial satisfaction of the claim.

I grant the landlord a total monetary order in the amount of **\$10,900.00** comprise of the balance due of unpaid rent in the amount \$10,800.00 and to recover the \$100.00 cost of the filing fee. This order may be filed in Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Further, should the above amount remain unpaid at the end of the tenancy. I authorize the landlord to keep the security deposit and pet damage deposit to offset the amount owed, pursuant to section 38(3) of the Act.

### Conclusion

The tenant's application to cancel the Notices are dismissed without leave to reapply. The balance of the tenant's claim is dismissed with leave; however, I note as I have ordered the tenancy to end any issues, such as repairs is moot. The only option to the tenant is to claim monetary compensation. The landlord is granted an order of possession and a monetary order for unpaid rent.

Page: 76 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: May 17, 2023

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Residential Tenancy Branch