



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Centurion Property Associates  
Inc and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on February 22, 2023 seeking compensation for unpaid rent, and damage to the rental unit. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 15, 2023. Both the Landlord and the Tenant attended the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord and the Landlord’s prepared documents for evidence. The Tenant did not prepare evidence on their own for this hearing.

### Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement that was in place between the parties. The rent began at \$2,260 when the tenancy started on September 1, 2020, then increased to \$2,339.77 as of January 1, 2023. The Tenant paid a security deposit amount of \$1,130.

The agreement provides that the Tenant was “strongly encouraged” to have their own insurance and provide proof of that insurance to the Landlord. The Tenant In the hearing clarified that their insurance expired in August 2022.

*a. rent amounts owing*

The Landlord in the hearing presented that they received the Tenant’s notice that they wished to end the tenancy on January 1, 2023 via email. The Tenant stated that they were “moving on” by January 31, 2023, and the Landlord considered this to be late. By email the Landlord informed the Tenant that the first legally valid date they tenancy could end was February 28, 2023.

In the hearing the Tenant stated that they had paid the rent for January 2023; however, they paid this late because of the disagreement they had with the Landlord about giving notice to end the tenancy. They paid the rent amount of \$2,339.77 in full on January 16, 2023.

In the hearing the Tenant stated they feel they do not owe the Landlord for the February rent amount, based on the end-of-tenancy notice they received from the Landlord on January 5. In the Landlord’s end-of-tenancy notice to the Tenant, that document provided for the final date, by which the Tenant must move out, as January 31. The Tenant waited for the prescribed 10-day mandatory pay date as set out on the end-of-tenancy notice, and paid the rent in full on January 16, 2023. As stated by the Tenant in the hearing: “it [i.e., the end-of-tenancy notice] stated we had 10 days to remedy account. . .”

In the hearing the stated, alternately, that perhaps it was a One-Month Notice to End Tenancy, signed by a property manager from a different building, the reason for which they could not recall. The Tenant also stated it was possible that it was a 10-Day Notice to End Tenancy for Unpaid Rent, and they mistook the 10-day end-of-tenancy date for a payment period, rather than the 5-day time period that such a notice normally sets out.

The Landlord clarified that they did not serve an end-of-tenancy notice to the Tenant. They have no record of any such notice to the Tenant for unpaid rent, and no record of January 2023 rent paid. The Landlord in the hearing reiterated that they informed the Tenant, on January 4, of the only possible end-of-tenancy date to be February 28, 2023. The Tenant in the hearing verified that they did have this date stated to them by the Landlord.

In their evidence, the Landlord provided a detailed ledger for the entire timeframe of this tenancy, printed on February 5, 2023 after the tenancy ended. This shows January and February 2023 as unpaid, for \$2,339.77 each.

*b. damage to rental unit*

The Landlord provided what they referred to as an “expert opinion” wherein a fire alarm company stated that “ambient air temperature did not activate the sprinkler on the balcony of [the rental unit] alone, but rather the heat from the BBQ paired with the environment conditions triggered the sprinkler head.” To the Landlord, this negligent action of the Tenant caused damage to the property.

The Landlord presented an invoice amount of \$1,286.25, that is for fire equipment. They requested payment of this amount from the Tenant on November 8, 2022. A detailed invoice from August 29 set out the detail for a sprinkler fitter technician to replace the sprinkler mechanism, as well as the labour involving removal of the spent sprinkler and its replacement with a new one.

The Landlord presented a second invoice for the amount of \$1,113, this was more basic repair work for the hole made in the ceiling by the sprinkler tech for the replacement of the sprinkler head. This work was completed on August 2, 2022.

In the hearing, the Tenant recalled using the barbecue, turning it on, placing food for cooking on the barbecue, and then the sprinkler installed in their balcony ceiling going off. The sprinkler itself was about 6 feet away from the barbecue, and there was no apparent reason to assume that what they were cooking, or how they were cooking it, would set off the sprinkler. This occurred around 7 or 8 pm on July 27, 2022. They confirmed that the sprinkler operation set off the entire building fire alarm and the entire rental unit building was then evacuated.

The Tenant reiterated this was just an ordinary use of their barbecue. They stated in the hearing that they “reached out” to the Landlord to state they were “happy to pay for half the costs” related to the incident.

For this part of the Application, the Landlord claims the total cost for repairs related to the incident; that total is \$2,399.25.

## Analysis

### *a. rent amounts owing*

The *Act* s. 45(1) covers how a tenant may end a periodic tenancy. The *Act* provides that a date shall not be earlier than one month after a landlord receives the notice, and such notice may only provide for an end-of-tenancy date that is the day before rent is paid as set in the tenancy agreement.

In the scenario where a landlord serves a tenant some end-of-tenancy notice because of unpaid rent, the *Act* s. 46(4) provides that a tenant has 5 days to pay overdue rent, in which case the notice has no effect. As per s. 46(5), when a tenant does not pay the rent within 5 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date as set out in the notice to end tenancy.

I infer from the parties' description of the Landlord's notice to end tenancy issued in January that it was a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). Neither party provided this document as evidence, so I cannot verify if it was legally valid, and I cannot assume that was the pretext for the tenancy having an end-date of January 31, 2023.

The Tenant paid rent on January 16 which would normally be a conclusive presumption because it was past the 5-day time period as set in s. 46(4). As I state above, I cannot verify that any dates provided on the document were correct. Strictly speaking, an end-of-tenancy date of January 31, 2023 would not be a 10-day period which is what an end-of-tenancy notice from the Landlord sets out. I find the end-of-tenancy notice to be cancelled for the reason that it is not in the evidence. I find this document, if it was served, cannot stand as the basis for this tenancy ending. For the Tenant to rely on that end-of-tenancy date as set out in that document, they would at the very least have to provide a copy of that document as evidence, which they had the opportunity to do for this dispute resolution process.

To establish the end-of-tenancy date as January 31, 2023, I would require that to be documented in order for it to be legally valid. For the purpose of this hearing, that is not documented, leaving me with the parties' description of the Tenant advising the Landlord, on January 1<sup>st</sup>, of their wish to end the tenancy on January 31<sup>st</sup>. This was confirmed by the Tenant in the hearing. The Tenant also confirmed that the Landlord informed them that the only legal end-date could be February 28, 2023.

By application of s. 45(1) of the *Act*, I find the Tenant notified the Landlord of ending the tenancy in a time period shorter than that prescribed by the *Act*. I find the Tenant is bound by the *Act*. Though a provision for a tenant ending a tenancy is not set out in the tenancy agreement in place between the parties, the *Act* applies to that tenancy agreement.

Following s. 45(1), I find the earliest end-of-tenancy date provided for by the *Act* was February 28. I grant the Landlord compensation for full rent for the month of February 2023, for \$2,339.77.

The Tenant presented that they paid rent for January 2023, and provided the date of January 16. The Tenant did not provide proof of this, such as some financial record or transaction, and I find the Landlord's ledger they provided outweighs the testimony of the Tenant in the hearing. The Tenant had an unclear recall in terms of dates, with reference to some end-of-tenancy notice they received from the Landlord. Based on the Landlord's ledger, as updated on February 5, 2023, I find the Tenant did not pay January rent to the Landlord, and that full amount remains owing. This is an additional \$2,399.77.

In full, the Tenant must pay the rent amount of \$4,679.54 to the Landlord. I find the Landlord has established this part of their claim based on the evidence they provided.

*b. damage to rental unit*

The *Act* s. 32 sets out that during a tenancy a tenant must repair damage to the rental unit that is caused by the actions or neglect of the Tenant.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Landlord provided amounts for the invoices they paid associated with the work involved with the July 27 sprinkler incident. I find this proves the value of the loss to the Landlord.

In particular with regard to the tenancy agreement, I find there was nothing barring the Tenant from using their barbecue on their balcony as they were at the time. However, with regard to the *Act*, I find there was an element of neglect of the Tenant in the way they used the barbecue that caused it to trigger the sprinkler. It is implausible that would happen on its own minus something more questionable going on with the barbecue at that time. On this point I look to the report provided by the Landlord that states "the sprinkler heads are very much to code" insofar as the fire alarm technician was able to assess that.

I find the Tenant also tactfully accepted responsibility for the incident in question, and I assign weight to their statement, existing as it does as evidence in this matter, that they offered to pay half the associated expense to the Landlord for this incident. In line with this, I find the amount reasonable, given that the Tenant was not strictly speaking breaching any provision of the tenancy agreement, though there was some element of the Tenant's actions or neglect causing the incident. I so grant the Landlord one-half of their claimed amount; I set this amount for compensation to the Landlord at \$1,200.

I find the Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee. The sum total of the award to the Landlord is \$5,979.54.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$5,979.54. After setting off the security deposit amounts of \$2,200 total, there is a balance of \$1,130. I am authorizing the Landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$4,849.54.

### Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,849.54. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: June 27, 2023

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Residential Tenancy Branch