



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR-MT, CNC, MNDCT, DRI, OLC, FFT

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice pursuant to sections 46 and 66;
2. cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
3. an order regarding the tenant’s dispute of a rent increase by the landlord pursuant to section 41;
4. a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
5. an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
6. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

FL, the landlord and SL, the landlord’s translator appeared at the hearing.

BL, the tenant, and BZ, the tenant’s daughter and advocate appeared at the hearing.

BZ testified that they served the landlord with their Notice of Dispute Resolution Proceeding and evidence by email. The landlord indicated that he received an email but is unsure whether he received it from the tenant or the residential tenancy branch.

The landlord indicated that they would like to proceed with the hearing. Based on the foregoing, I find that pursuant to s. 71(2) of the Act that the landlord was sufficiently served with the tenant's application materials.

Rule 3.15 required that a respondent's evidence be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, the respondent landlord's evidence was not received by the Residential Tenancy Branch until one day before the hearing. As a result, the landlord was advised during the hearing, that their evidence which was uploaded late would not be considered for the purpose of rendering a decision in this matter.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

#### Preliminary Matters

At the outset of the hearing, the parties confirmed that the tenant's vacated the rental property on March 26, 2023, and the landlord was provided with the keys to the rental property on March 27, 2023.

As the tenancy ended prior to the hearing, I find that the tenant's applications for: cancellation of the 10-Day Notice; cancellation of the One Month Notice; an order regarding the tenant's dispute of a rent increase; and an order for the landlord to comply with the Act, regulation or tenancy agreement are no longer applicable to the circumstances of the parties.

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 tenant's applications listed above.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that monthly rent at the time the tenancy ended was \$1,780.00 and is payable on the first of each month. No security deposit was collected.

The tenant applied for a monetary award as follows:

	Item	Amount
1.	January and February Rent	\$3,560.00
2.	Shaw Cable (18 month internet fee)	\$1,089.00
3.	Tenant's Daughter Unable to Work	\$1,500.00
4.	New Rental Place	\$2,200.00
5.	Illegal Rent Increase	\$780.00
6.	Illegal Heat Fee	\$600.00
7.	New Rental House	\$6,912.00
	<b>Total:</b>	<b>\$16,741.00</b>

The tenant's advocate testified that the tenant is seeking the return of rent for January and February 2023 because the landlord turned off the water at the rental property during this time.

The tenant's advocate testified that their tenancy was supposed to include internet; however, the landlord never hooked up the internet, so the tenants were forced to set up their own internet. The tenant's stated that they paid for internet for 18 months of their tenancy and they are seeking compensation for the internet. The tenant submitted shaw cable receipts in support of this claim.

The tenant's advocate testified that they are seeking \$1,500.00 in compensation because they got a fever from not having heat and hot water and as a result, they were unable to work for one month.

The tenant's advocate testified that they were forced to move out of the rental unit on an emergency basis. They found a new place quickly and the rent in the new place is \$2,200.00 per month. The tenant is seeking compensation in the amount of \$2,200.00 for the cost of the first month's rent in the new place and as a move out fee.

The tenant's advocate testified that the landlord illegally raised their rent from \$1,600.00 to \$1,780.00 a month in October 2022. The tenants are seeking the return of the difference between the original rent and the increased rent for a period of five months (\$180.00 x5) because the tenants paid the illegally increased rent from October 2022 to February 2023.

The tenant's advocate testified that they are seeking \$600.00 for an illegal heat fee. The tenant's advocate testified that the landlord advised them at the beginning of the tenancy that everything would be included in the rent. However, the landlord later asked the tenant to pay for heat. The tenant's advocate testified that they paid \$600 in addition to their rent in August 2022. The tenant submitted a transaction record showing a payment of \$2,200.00 to the landlord in August 2022.

Finally, the tenant is seeking \$6,912.00 in compensation for the difference between they rent the paid to the landlord and the rent they paid for their new rental unit for a period of one year. The tenant's advocate testified that they were forced to leave the rental unit because the landlord refused to turn on the water. The tenant now pays \$2,200.00 a month for rent.

In response to the tenant's advocates testimony, the landlord testified that all of the tenant's advocate's statements are a lie. The landlord testified that the tenant and her advocate threatened other tenants at the rental unit and the police were called to the property twelve times. The landlord testified that the tenant and their advocate significantly disturbed the other tenants causing many other tenants to leave. The landlord testified that the tenants were served a 10-Day Notice in February for unpaid heating expenses. The landlord testified that they tenant ran the hot water tank to empty so that the other tenant in the building would not have any water to use.

The landlord testified that they added a knob to the water supply, but it was not a lock. The landlord testified that the tenant's called the police, but it was a false alarm. The landlord testified that when a repair person was sent to the house, the tenant and her advocate would not allow them to enter.

The landlord testified that there were lots of fights between the tenant, her advocate and the other tenants. The landlord testified that it was the tenant who shut off the electricity and internet. The tenants also blocked the other tenants from leaving the property.

The landlord testified that the utility bill for the property was \$26,000.00 for a period of three months. The tenants were asked to share the utility bills. The landlord testified that the tenant's damage the house prior to leaving and left lipstick on the walls. The landlord disputes that they ever shut off the water or electricity.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a monetary award.

#### 1. January and February Rent \$3,650.00

The tenant is seeking the return of their rent paid for the months of January and February 2023, because they allege that the landlord turned off their water during these months. The landlord disputes that they turned off the tenant's water. Section 26(1) of the *Act* required that a tenant pay rent when it is due under a tenancy agreement, whether or not the landlord complies with this *Act*, the regulation or the tenancy agreement. On that basis, I find that the tenants were required to pay rent for the months of January and February. Furthermore, I have reviewed the tenant's evidence with regard to the water and I find that the tenant has not met the burden upon them to prove that they were without water for the duration of January and February nor am I able to determine for what duration they were without water.

While section 65(f) of the *Act* allows the director to order that that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. In this case, based on the tenant's submissions and evidence, I am unable to determine a reduction that would be equivalent to a reduction in the value

of the tenancy agreement. On that basis, I decline to award the tenant compensation for this claim.

2. Shaw Cable \$1,089.00

The tenant is seeking \$1,089.00 because they paid for cable and internet for 18 months of the tenancy. The tenant's advocate testified that the tenancy agreement was supposed to include cable and internet; however, the cable and internet was never provided by the landlord. I have considered the tenant's claim; however, the tenant has not provided any tenancy agreement to support that internet was included in the tenancy. On that basis, I find that the tenant has not met the burden which is upon them to prove the existence of the damage/loss. I decline to award the tenant compensation for this claim.

3. Tenant's daughter Unable to Work \$1,500.00

The tenant's advocate testified that they are seeking \$1,500.00 in compensation because they got a fever from not having heat and hot water and as a result, they were unable to work for one month. The medical note submitted into evidence indicates that the tenant's daughter sprained their ankle and was unable to attend work. I find that the tenant has not established that any loss of wages incurred by the tenant's daughter was the result of a direct violation of the agreement or a contravention of the Act on the part of the landlord. I decline to award the tenant compensation for this claim.

4. New Rental Place \$2,200.00

The tenant is seeking compensation in the amount of \$2,200.00 for the cost of the first month's rent in their new rental unit. The tenant testified that they were forced to move because the landlord turned off the heat and hot water and, on that basis, they believe they are entitled to this claim as a move-out fee.

I have considered the tenant's claim and I find that the tenant's have not established that they were forced to move from the rental unit because the landlord turned off the heat and hot water. I note that the landlord issued at least two Notices to End Tenancy prior to the tenant's vacating the rental unit and I find the tenants have not satisfied me that neither Notice was validly issued. Moreover, I note that the consistent evidence between the parties is that the tenant's did not pay rent to the landlord for the month of a March 2023; however, they lived in the rental unit for the majority of the month. Ultimately, I find the tenant has not proven on a balance of probabilities that they

suffered a loss, meaning they were required to pay a higher rent in a new rental unit, because of a violation of the agreement or a contravention of the *Act* on the part of the landlord. I decline to award the tenant compensation for this claim.

5. Illegal Rent Increase \$780.00

The tenant is seeking \$780.00 in compensation because the landlord illegally raised the rent during the tenancy. The tenant testified that the rent was \$1,600.00 and was increased to \$1,780.00 in December 2022. The tenant's advocate testified that the tenant paid the rent increase from December 2022 to February 2023. Importantly, the tenant is seeking \$780.00 which is inconsistent with their claim for the difference between \$1,600.00 and \$1,780.00 for five months which amounts to \$900.00 (5 x \$180.00). With that said, I find that the tenant has provided sufficient evidence to support that the landlord raised their rent from \$1,600.00 to \$1,780.00 during the tenancy in contravention of the *Act*. The tenant paid rent at the new rate for a period of five months. On that basis, I award the tenant's \$900.00 compensation for this claim.

6. Illegal heat Fee \$600.00

The tenant's advocates testified that the tenancy agreement was supposed to include heat; however, they were required to pay \$600.00 for heat for 2022 in August 2022. In support of this, the tenant provided a transaction record showing a payment of \$2,200.00 to the landlord in August 2022. I have considered the tenant's claim; however, the tenant has not provided a tenancy agreement to support that the landlord would bear the cost of heat during the tenancy. On that basis, I find that the tenant has not met the burden which is upon them to prove the existence of the damage/loss. I decline to award the tenant compensation for this claim.

7. New Rental House \$6,912.00

The tenant is seeking \$6,912.00 for the difference between the rent they paid to the landlord and the rent they paid for their new rental unit for a period of one year. The tenant's advocate testified that they were forced to leave the rental unit because the landlord refused to turn on the water. The tenant testified that they now pay \$2,200.00 a month for rent.

As previously discussed, I am not satisfied that the tenant's were forced to end their tenancy with the landlord because the landlord turned off the heat and hot water. The tenant has not met the burden which is upon them to prove that they suffered a loss,

meaning they were required to pay a higher rent because of a violation of the agreement or a contravention of the Act on the part of the landlord. I decline to award the tenant compensation for this claim.

As the tenant was partially successful in their claim, I find that they are entitled to recover the cost of the filing fee paid for this application from the landlord.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,000.00 as follows:

Item	Amount
Illegal Rent Increase	\$900.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$1,000.00</b>

The landlord must be served with this Order as soon as possible. Should the landlord 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: June 19, 2023

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Residential Tenancy Branch