



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNDCT, RR, RP, FFT  
OPR, MNRL, FFL

### Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The tenant applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

The landlord applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

JP (the “Landlord”) and JL (the “Tenant”) attended the hearing.

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.

As both parties were in attendance, I confirmed that there were no issues with service of the Tenant's Notice of Dispute Resolution Proceeding package (Proceeding Package). In accordance with section 89 of the Act, I find that the Landlord was served with the Tenant's Proceeding Package.

### Preliminary Matters

#### *10-Day Notice*

Section 52 (c) of the Act states that in order to be effective, a notice to end a tenancy must be in writing and **must** state the effective date of the notice. As the parties were informed during the hearing, I have reviewed the 10-Day Notice which is submitted into evidence by both parties and find that it does not contain an effective date. Therefore, I find that the 10 Day Notice does not comply with section 52(c) of the Act. As a result, the Tenants' application for cancellation of the 10 Day Notice is granted and the 10-Day Notice of June 7, 2023, is cancelled and of no force or effect.

In turn, the Landlord's application for an Order of Possession based on the 10-Day Notice is dismissed without leave to reapply. I make no finding as to the merits of the Landlord's application for a monetary order based on unpaid rent. However, because I have found that the 10-Day Notice is not effective, I decline to consider the Landlord's monetary claim for unpaid rent.

#### *Tenant's Evidence*

Rule of Procedure 3.14 requires that evidence not submitted to the Residential Tenancy Branch at the time of Application for Dispute Resolution be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. The Tenant's evidence was provided to the Residential Tenancy Branch 4 days before the hearing. As the Tenant was advised during the hearing, based on Rule of Procedure 3.17, I decline to consider the Tenant's evidence.

#### *Lack of Particulars to Support Claims*

The Tenant applied for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67. However, the Tenant was informed that this application was being refused, pursuant to section 59(5)(c) of the Act, because the application did not include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, as is required by section 59(2)(b) of the Act.

The objective of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. Rule 2.5 of the RTB Rules of Procedures requires to the extent that it is possible, the applicant must submit a detailed calculation of any monetary claim being made.

In this case, I find that the Tenant has not provided a detailed calculation of their monetary claim. Rather the Tenant indicates that they are seeking a monetary claim of \$12,100.00 which they submit is for “unpaid 50% of BC hydro and Fortis BC gas, removed garbage from the property that tenants left behind, fixing kitchen sink and bathroom sink.” While the Tenant purported to have provided evidence to support the breakdown of this claim. I have previously excluded the Tenant’s evidence from consideration as it was not provided to the Residential Tenancy Branch in accordance with the timelines required by the Rules of Procedure. Therefore, I find I have no detailed breakdown or detailed calculation of the Tenant’s claim.

Similarly, I find that my assessment above applies to the Tenant’s application for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided which appears to be a duplication of their monetary claim.

Based on the foregoing, I find that proceeding with the Tenant’s application at this hearing would be prejudicial to the Landlord, as the absence of particulars that set out the Tenant’s claim, makes it difficult, if not impossible, for the Landlord to adequately prepare a response. For this reason, as the parties were informed at the hearing, the Tenant’s applications for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act and an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act are dismissed with leave to reapply.

#### Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?  
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 confirmed that they entered into a written tenancy agreement starting June 1, 2021. Monthly rent is \$2,500.00 and is payable on the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,250.00 which the Landlord continues to hold in trust for the Tenant.

The Tenant testified that they are seeking repairs to the dishwasher and stove in the rental property. The Tenant testified that they have been asking the Landlord to fix these appliances for over a year. The Tenant testified that none of the burners on the stove are functional, so they have been cooking outside on their barbeque.

The Tenant testified that the oven works sometimes but is not reliable. The Tenant testified that their main concern is the stove. The Tenant testified they require notice from the Landlord if the Landlord is going to attend to make repairs.

The Landlord testified that they have done repairs promptly in the past. The Landlord disputes that the Tenant has been seeking repairs to the dishwasher and stove for more than a year. The Landlord testified that the Tenant texted him on January 9<sup>th</sup>, 2023, and they attended the residence on January 29<sup>th</sup> to make repairs; however, the Tenant was not home. The Landlord testified that there have been a number of text messages sent back and forth between the parties; however, they have not been able to agree on a time to make the repairs. The Landlord testified that they have a new stove purchased for the rental property.

## Analysis

Section 32(1) of the Act states:

- 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.

*Residential Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* states that a landlord is responsible for repairs to appliances provided under

the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The Landlord does not dispute that the stove and dishwasher are in need of repair. Further, there is nothing before me to suggest that damage to these appliances was caused by the deliberate actions or neglect of the Tenant. On that basis, I order the Landlord to make the necessary repairs to the stove and dishwasher, not later than 30 days from the date of this hearing.

The Landlord is cautioned to comply with section 29 of the Act prior to entering the rental property for the purpose of making the required repairs.

As the Tenant was partially successful in their application, I find that they are entitled to recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the Tenant may withhold \$100 from ONE future payment of rent.

### Conclusion

The Landlord's application is dismissed in its' entirety. The Landlord is granted leave to reapply for a Monetary Order for unpaid rent.

The Tenant's application for cancellation of the 10-Day Notice is granted.

The Tenant's applications for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided are dismissed with leave to reapply.

The Tenant's application for an order for the landlord to make repairs to the rental unit is granted. The Landlord is ordered to make the necessary repairs not more than 30 days from the date of this decision.

The Tenant may withhold \$100 from ONE future payment of 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: August 22, 2023

---

Residential Tenancy Branch