



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      Tenant: CNL-4M, RP, OLC, FFT  
Landlord: OPR, OPB, MNRL, MNDCL, FFL

### **Introduction**

This hearing concerned the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* to cancel a Four Month Notice to End Tenancy for Demolition or Conversion of the rental unit; repairs to the rental unit; an order that the Landlord abide by the Act, regulations or tenancy agreement; and, a request for reimbursement of the filing fee.

The hearing also dealt with the Landlord's cross-application for an Order of Possession based on the 10 Day Notice issued June 7, 2023 under sections 46 and 55 of the Act; a One Month Notice to End Tenancy for Cause issued June 29, 2023; a Two Month Notice to End Tenancy for Landlord's use of the rental unit issued January 29, 2023; a Monetary Award for Unpaid Rent and a Monetary Award for compensation under the Act; and, reimbursement of the filing fee.

### **Issues to be Decided**

Is the Tenant entitled to Cancel a Four-Month Notice to End Tenancy for Demolition or Conversion of the Rental Unit?

Is the Tenant entitled to an order for repairs to the rental unit, and/or an order that the Landlord comply with the Act, regulations and/or tenancy agreement?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for Unpaid Rent and/or Unpaid Utilities?

Is the Landlord entitled to a Monetary Order for compensation under section 67 of the Act?

Are either the Tenant or the Landlord entitled to reimbursement of the filing fee?

### Background and Evidence

While the Tenant attended the hearing by way of conference call, the Landlord did not. The Tenant who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Evidence was provided showing that this tenancy began on June 1, 2018, on a month-to-month basis. The monthly rent is \$1,250.00, due on first day of the month. The Tenant testified that he paid a security deposit of \$625.00 at the start of the tenancy. The Tenant further testified he had entered into a written tenancy agreement with the former owner of the rental unit, but the rental unit had been purchased by the current Landlord in approximately December 2022 or January 2023. The Tenant stated the Landlord had not provided him with a written tenancy agreement.

The Tenant testified that he paid his monthly rent in cash to the Landlord. The Tenant stated that the Landlord has not provided him with receipts for these payments. The Tenant testified he had requested the Landlord's address and email for e-transfer purposes but the Landlord had not provided it to him. The Tenant testified his only means of communication with the Landlord was by text. The Tenant submitted text messages with the Landlord confirming his requests to pay rent by e-transfer. The text messages indicate no response from the Landlord. The Tenant stated he had confirmed with the prior owner that the Landlord had purchased the rental unit and he was to pay the Landlord monthly rent. Other than the prior owner's statements, the Tenant testified he was not provided any documentation concerning the Landlord's purchase of the property or ownership interest in the rental unit.

Although the Landlord did not attend the hearing, he submitted several five 10-Day Notices to End Tenancy for unpaid rent and/or unpaid utilities. The Landlord submitted the first page of 10-Day Notices for unpaid rent dated February 9, March 2, April 6 and May 10, 2023, some of which bore notation that rent was paid late. The most recent Notice was issued June 26, 2023 with an effective date of June 30, 2023 for unpaid rent totaling \$10,200.00 and unpaid utilities of \$672.98. This was the only Notice submitted by the Landlord that contained all pages. Documents submitted by the Landlord stated that the unpaid rent concerned the amount of rent the Landlord had incurred as a result

of not personally occupying the rental unit. There was no proof of service submitted by the Landlord for any of the 10-Day Notices, including the Notice issued June 26, 2023.

The Landlord also submitted a One Month Notice to End Tenancy for Cause issued June 29, 2023 with an effective date of March 31, 2023. The stated reasons for the Notice were repeated unpaid rent, unauthorized subletting and an unreasonable number of occupants in the rental unit. The Notice provided service had been made to the Tenant personally and by posting on the door. No proof of service was submitted by the Landlord.

Finally, the Landlord submitted a Two Month Notice to End Tenancy for the landlord's or landlord's spouse's parent(s) to occupy the rental unit. The Two Month Notice was issued January 29, 2023 with an effective date of March 31, 2023, and stated that service was made to the Tenant by posting on the door of the rental unit. No proof of service was submitted for this Notice.

The Tenant testified that he had not been served with any Notice to End Tenancy by the Landlord. The Tenant did submit a revoked Two Month Notice issued by the owner for a potential purchaser of the rental unit who wanted to occupy the unit. The Tenant testified that the Notice had been revoked by the owner (his former landlord) when the sale to that purchaser was not completed.

The Tenant's application for dispute resolution requested cancellation of a Four Month Notice to End Tenancy for Demolition or Conversion. However, the Tenant testified that this was an error when he was completing the application. The Tenant's application further requested repairs to the rental unit, that the Landlord abide by the Act, and reimbursement of the filing fee. The Tenant testified he served the Landlord with the dispute resolution package and copies of his evidence on August 3 or 4, 2023. The Tenant stated that, as he had no address or e-mail contact for the Landlord, he served the upper-level occupant whom the Landlord had earlier identified as his son. A text submitted by the Tenant confirms that the Landlord identified the upper-level occupant as his son. When providing the package to the upper-level occupant, that individual denied he was the Landlord's son but promised to give the package to the Landlord. The Tenant stated that he notified the Landlord by text and the Landlord indicated he would pick-up the package.

The Landlord did not submit a proof of service regarding his cross-application for dispute resolution requesting an order of possession based on the Notices to End Tenancy, or based upon the Tenant was required to vacate the unit under a tenancy agreement; a monetary order for unpaid rent and/or utilities or compensation; and, reimbursement of the filing fee. The Tenant stated he did not receive a dispute resolution package from the Landlord.

## Analysis

### **1. The Tenant's Request for Repairs to the Rental Unit**

Section 32 of the Act provides that a landlord is responsible for ensuring that rental units meet health, safety and housing standards established by law, and the unit is reasonably suitable for occupation. To the extent a Tenant requests the Landlord make necessary repairs to a rental unit, the Landlord must first be made aware of the repair and be provided an opportunity to make the repair.

During the hearing, the Tenant testified that while he was out of the country in February 2023, a portion of the ceiling in the kitchen had collapsed. He stated that the Landlord had made repairs but had failed to put in a new ceiling panel leaving that the pipe/duct exposed. The Tenant also stated that the exposed pipe or duct had recently started to leak or condensation had built-up on it and was dripping onto the kitchen floor. The Tenant testified he had not notified the Landlord of the issue as it had occurred a day or two prior to the hearing.

The Tenant also submitted photographs that the upper-level tenant(s) had filled the garbage receptacle, leaving no room for his trash. The Tenant provided no evidence other than a photograph of filled trash container.

While the Tenant has applied for repairs to the rental unit, I find it is evident from his testimony that this was premature as no evidence or testimony was presented that, with respect to the kitchen, the Landlord had been notified of the need for repairs; and, with regard to the garbage receptacle, that the issue was more than an isolated event or that the Landlord was notified. I dismiss the Tenant's application for repairs to the rental unit, with leave to reapply.

### **2. The Tenant's Remaining Claims**

The Tenant requested that the Landlord abide by the Act, regulation and/or tenancy agreement. The Tenant presented no evidence relating to this claim.

The Tenant's request that a Four Month Notice to End Tenancy was mistakenly made testifying he checked this part of the application in error.

I make no findings on either of these remaining claims by the Tenant.

### **3. Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**4. The Landlord's Claims for Order of Possession, Monetary Award for Unpaid Rent and/or Utilities, and Reimbursement of the Filing Fee from the Tenant.**

Rule 6.6 Residential Tenancy Branch Rules of Procedure states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove the Landlord's claims, on a balance of probabilities, is on the Landlord.

Having failed to attend the hearing and present evidence, I find the Landlord has not met his onus of proof to support his claims. Therefore, the Landlord's application for an order of possession based on a 10-Day issued June 26, 2023; a One Month Notice issued June 29, 2023; a Two Month Notice issued January 29, 2023; or, the alleged tenancy agreement; as well as the request for a monetary award for unpaid rent and/or utilities, are dismissed without leave to re-apply.

The Landlord was unsuccessful in this application, and thus the Landlord's application for authorization to recover the filing fee from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

The Tenant's application for repairs to the rental unit and request is dismissed with leave to reapply.

The Landlord's application is dismissed in its entirety, without leave to reapply.

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: September 06, 2023

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Residential Tenancy Branch