



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL, MNRT, MNDCT, DRI, RR, OPR-DR, MNR-DR, FFL,

Introduction

This hearing dealt with cross applications.

Under the Residential Tenancy Act (the "Act") the Landlord used the direct request process to apply on August 9, 2023 for:

- An order of possession due to a 10 Day Notice to End Tenancy for unpaid rent not paid in the required time
- A monetary order for the unpaid rent that was not paid in the required time after issuing 10 Day Notice to End Tenancy for unpaid rent in addition to an order of possession for rent not paid in the required time
- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The Landlord's application was diverted to a participatory hearing because on August 10, 2023, the Tenant applied for:

- Cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- A Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order to cancel a rent increase by the landlord under section 41 of the Act
- An order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act

- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to a Monetary Order for the cost of emergency repairs to the rental unit?
- Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?
- Is the tenant entitled to an order regarding the tenant(s) dispute of an additional rent increase by the landlord?
- Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the tenant entitled to recover the filing fee for this application from the landlord?
- Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant and landlord both agreed that the tenant vacated the premises on August 31, 2023.

• Utilities

The tenant affirmed that utilities remain unpaid, but that she never received a 30 day written demand letter for their payment.

The landlord acknowledged that a 30 day written demand letter for unpaid utilities was not sent to the tenant.

• Unpaid Rent

The tenant has affirmed that rent for May, June, July, and August of 2023 remains unpaid.

May	\$1200.00
June	\$1200.00
July	\$1200.00

August	\$1200.00
Total unpaid rent	\$4800.00

- Repairs

The tenant provided a list of repairs that she affirms she provided labour and transportation for. Most of the listed items were for work done in the rental unit. However, several listed items were in relation to work done in the landlord's residence. The tenant affirmed that she deducted the costs of all listed work from the unpaid rent, with the landlord's agreement.

The tenant's supporting documentation is for repairs that occurred between August 2021, and January 2022. The tenant's evidence indicates that costs were deducted from the rent paid at that time.

For the remaining repairs, the tenant did not obtain landlord's written agreement to do the repairs, and the landlord affirms that permission to deduct the costs from rent was not given. The tenant did not follow the Act regarding requesting regular repairs and had no proof the landlord agreed to reimburse the tenant for repairs or reduce the rent in exchange for repairs.

- Emergency Repair

The alleged emergency repair was present when the tenancy started on September 01, 2021. It was a leaking sink which the tenant repaired with sealant.

Analysis

- Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

The tenant's application is dismissed because they already moved out. The landlord does not need an order of possession because they already have possession.

- Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

As the tenant has already moved out, the tenancy is over, so the notice does not need to be adjudicated.

- Is the tenant entitled to a Monetary Order for the cost of emergency repairs to the rental unit?

Section 33(3) of the Act allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.

Section 33(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

The repair in question did not meet the criteria of an emergency repair so the tenant is not entitled to a rent reduction or other compensation.

- Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

The tenant was unable to provide sufficient evidence that they were owed an outstanding debt for work done in the rental unit. They further were unable to provide evidence that that they obtained landlord permission to do said work or to deduct it from the rent. Any work at the landlord's residence is outside of the purview of the Act.

The tenant is not entitled to an order allowing a reduction of rent for repairs.

- Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant was unable to prove a loss occurred that was caused by the landlord's actions or neglect. The tenant is not entitled to a monetary order for damage or loss.

- Is the tenant entitled to cancelation of an additional rent increase by the landlord?

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

As the landlord is only requesting unpaid rent that matches the rent amount in the tenancy agreement, this claim is dismissed.

- Is the landlord entitled to a Monetary Order for unpaid rent?

Section 46 (6) states that if the tenant pays utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent. Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

As the landlord did not issue the tenant a 30 day written demand for payment of utilities, the landlord is not entitled to treat unpaid utilities as unpaid rent.

The landlord is entitled to a monetary order of \$4800.00 for unpaid rent.

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

As the tenant's application has not been successful, they are not entitled to return of their filing fee.

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

When a tenant files to dispute a notice to end tenancy for unpaid rent, the landlord does not need to file an application for an order of possession and a monetary order for unpaid rent because these will automatically be awarded to the landlord if the tenant's application is dismissed.

When the landlord filed their application on August 10 the tenant's application to dispute the notice had not yet been processed, and the tenant had not yet moved out. I find the landlord had a good reason to file on August 10th and are entitled to recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply. I grant the landlord a Monetary Order in the amount of **\$4900.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$4800.00
Recovery of filing fee	\$100.00
Total Amount	\$4900.00

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 11, 2023

Residential Tenancy Branch