

## **DECISION**

### **Introduction**

This hearing dealt with two of the Tenant's applications pursuant to the *Residential Tenancy Act* (Act). The Tenant's first application for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- a Monetary Order of \$4,340.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 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
- an order for the Landlord to make emergency repairs for health or safety reasons under sections 33 and 62 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

And the Tenant's subsequent application for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order for the Landlord to comply with the Act, regulation and tenancy agreement
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

The original hearing began on February 11, 2025, and an interim decision was issued dated February 14, 2025, which should be read in conjunction with this decision.

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

The following service issues arose:

- Service of the Tenant's google drive photograph evidence, which was excluded in full as it was not served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).
- Service of the Tenant's amended application for the Landlord to complete emergency repairs. As the Tenant did not properly submit the revised claim as an Amendment through the RTB DMS Dispute Access site and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.1, I initially refused to proceed on this issue. However, the issue was later addressed as part of the settlement agreement between the parties, which I will address later in this decision.

## **Preliminary Matters**

The parties agreed that the issue of the 10 Day Notice was resolved as within five days of receiving the 10 Day Notice the Tenant paid the rent arrears to the Landlord. As such, I find the Tenant's application for cancellation of the 10 Day Notice is moot. This claim is dismissed without leave to reapply.

Further, the Tenant testified that they would like to withdraw their application for authorization to change the locks to the rental unit under section 70(2) of the Act. As such, this claim is dismissed without leave to reapply.

The parties indicated their intention to settle their dispute.

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute for the following:

- an order for the Landlord to make emergency repairs for health or safety reasons under sections 33 and 62 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order for the Landlord to comply with the Act, regulation and tenancy agreement

The parties agreed to the following terms of a final and binding resolution of the issues noted above and that they did so of their own free volition and without any element of coercion:

1. The Landlord agrees to complete all necessary repairs to the fireplace no later than March 10, 2025, to address safety concerns. The repairs are limited to ensure the fireplace does not pose a safety risk to the rental unit or its occupants.
2. Effective March 3, 2025, service of documents will be completed in accordance with the Act, regulations or tenancy agreement.

These particulars comprise the full settlement of all aspects of the Tenant's current applications for the issues noted above as part of the settlement. I will address the remainder of the Tenant's applications later in this decision.

Pursuant to section 62(3) of the Act, I make the following order:

**I ORDER** the parties to comply with their mutually settled agreement described above.

### **Issues to be Decided**

Should the Landlord's One Month Notice(s) be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to a Monetary Order of \$4,340.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Should there be 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?

Is the Tenant entitled to recover the filing fee(s) for their application from the Landlord?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began on November 1, 2024. The Tenancy Agreement (TA) was submitted in evidence. The TA listed monthly rent of \$6,500.00 for the entire house (the House), to include the basement suite (Basement).

The monthly rent was due on the first day of each month. On October 14, 2024, the Tenant paid a security deposit of \$3000.00 and on December 3, 2024, the Tenant paid a security deposit of \$250.00. The Landlord holds the total security deposit of \$3,250.00.

On January 4, 2025, the Landlord served via email to the Tenant the One Month Notice dated January 4, 2025, with an effective date of February 28, 2025 (One Month Notice 1). The One Month Notice 1 was submitted in evidence.

The One Month Notice 1 indicated the following reason to end the tenancy:

- The Tenant is repeatedly late paying rent
- The security deposit was not paid within 30 days as required by the tenancy agreement

The Details of Cause(s) section reads:

None of your payments including the initial damage deposit has been paid on-time or in full amount by their due date. You also clearly state in your text message on Jan 2nd, 2025 that you do not intend to pay Jan rental fee in full amount. As a result of this, we want to finish this tenancy agreement by the the date mention on the first page. History of your payments are as follow:

Deposit of \$3250: Due, 14-Oct-2024 , payments: \$3000 on 14-Oct-2024 and \$250 on 03-Dec-2024

Nov rent of \$4300: Due, 01-Nov-2024, payments: \$3000 on 04-Nov-2024, \$1061.38 credit for cleaning fee, and \$238 on 03-Dec-2024

Dec rent of \$4300: Due 01-Dec-2024, payments: \$3000 on 01-Dec-2024, \$1300 on 03-Dec-2024

Jan rent of \$6500: Due 01-Jan-2025, payments: \$3000 on 01-Jan-2025, \$2400 on 02-Jan-2025, \$1100 still unpaid

[reproduced as written]

Both parties agreed that the Tenant was required to pay monthly rent of \$4,300.00 for November 2024 and December, given the Basement was occupied by other tenants.

Legal Counsel HF for the Landlord submits for November 2024 the Tenant paid rent as follows:

- \$3000.00, on November 4, 2024
- \$238.62, on December 3, 2024

Legal Counsel submits the Landlord allowed the rent reduction of \$1,061.38 to cover the costs of cleaning as negotiated between the parties. Legal Counsel submits the Tenant was to pay rent in full. The Landlord stated that they accepted the Tenant's decision to hold back \$1,061.38 for cleaning costs, versus payment and payback of this amount. Legal Counsel submits there was no agreement for the Tenant to hold back the amount of \$238.62 until December 3, 2024.

Legal Counsel submits the Tenant paid rent for December 2024 (\$4,300.00) and January 2025 (\$6,500.00) as follows:

- \$3000.00, on December 1, 2024
- \$1,300.00, on December 3, 2024
- \$3000.00, on January 1, 2025
- \$2,400.00, on January 2, 2025
- \$1,100.00, on January 5, 2025

The Tenant paid rent of \$6,500.00 on time in February 2025. The Tenant paid rent of \$4,300.00 for March 2025.

The Tenant testified that their e-transfer transaction limit was of \$3000.00, and the parties had a verbal agreement for them to pay the security deposit of \$250.00 on a later date after the initial payment of \$3000.00 on October 14, 2024.

The Tenant testified that at the start of the tenancy they experienced multiple issues with the rental unit, and there was a verbal agreement for them to tally the amount of cleaning costs in order to deduct the total from rent owed. The Tenant testified that the parties acknowledged that they would not know the total amount of the cleaning costs and other expenses until the issues were addressed and the work was completed. The Tenant testified that based on the verbal agreement they deducted the amount of \$1,061.38 and thereafter paid \$238.62 on December 3, 2024.

The Tenant's application details show that on January 26, 2025, the Landlord served via email to the Tenant the One Month Notice dated January 26, 2025, with an effective date of February 28, 2025 (One Month Notice 2). The One Month Notice 2 was submitted in evidence.

The One Month Notice 2 indicated the following reason to end the tenancy:

- The Tenant put the Landlord's property at significant risk

The Details of Cause(s) section reads:

- According to Addendum #4 of our tenancy agreement, you were required to obtain tenancy insurance:  
'The tenant will agree to get the tenancy insurance to cover the upcoming damages if any'  
This is a matter of great importance, and by failing to fulfill this obligation, you have exposed the property to significant risk. Your failure to adhere to this legal responsibility under the tenancy agreement is concerning.  
As a result of this serious breach, we are issuing you a one-month notice to end the tenancy for cause.

[reproduced as written]

Legal Counsel submits the Tenant breached their tenancy when they failed to obtain tenant insurance as per Addendum #4 of the TA, which states:

- The tenant will agree to get the tenancy insurance to cover the upcoming damages if any.

[reproduced as written]

Legal Counsel submits the Tenant was to provide confirmation of such insurance to the Landlord for possible issues resulting from the actions or negligence of the Tenant. Legal Counsel submits lack of tenant insurance raised the possibility of significant loss for the Landlord.

The Landlord testified that they informed the Tenant of this requirement and expected for them to take action, which the Tenant did so ten days after they were served with the One Month Notice dated January 26, 2025.

The Tenant testified that the Landlord initially said they had no issue with tenant insurance, or lack of in this case. The Tenant testified that they purchased tenancy insurance on February 4, 2025, and the confirmation was submitted in evidence.

The Tenant is seeking a monetary order as follows:

Item 1 - \$2,150.00, as compensation for uninhabitable conditions. The Tenant testified that the rental unit was not in livable condition for the first one and half months of their tenancy, however, they are seeking compensation for a two week period from November 1, 2024, to November 15.

The Tenant testified there were issues with damaged garage doors, broken locks and kitchen appliances. The Tenant testified that the issue of the dishwasher was not addressed for one and a half months. The Tenant stated that the rental unit did not have smoke detectors. The Tenant stated that the fireplace was broken and presented as a safety concern. The Tenant stated that they dealt with numerous cleaning and safety issues. The Tenant stated that the above issues impacted them as they had to cancel appointments and could not attend work.

Legal Counsel submits the rental unit was occupied by the Tenant effective November 1, 2024. Legal Counsel submits the Tenant raised issue with lack of cleaning, which was resolved between the parties within two days.

Legal Counsel submits on November 10, 2024, the Tenant raised the issue of smoke detectors, which was fixed by the Landlord on November 11, 2024.

Legal Counsel submits the issue of locks was resolved immediately and the garage doors were fixed within two to three days.

Legal Counsel submits the dishwasher had a broken soap dispenser. The Landlord ordered a new dishwasher on November 5, 2024, and the replacement was completed

on November 13, 2024. Legal Counsel submits the stove and microwave were also replaced by December 17, 2024.

Legal Counsel submits all items raised were working and in use and there was no significant delay to the Tenant. Legal Counsel submits the Landlord offered to immediately resolve issues, however, the Tenant agreed to the longer delay for replacement of appliances.

Item 2 - \$2,200.00, for compensation for rent paid in January 2025 for an illegal Basement. The Tenant referred to the Addendum attached to the TA for the following:

- The agreement is for the full house (including the main floor and the basement).
- Since the basement is still occupied by other tenants, until they move out, the landlord agreed to consider a \$2,200.00 rent credit. The Tenant will only pay \$4,300.00 per month until possession of the basement suite at which time rent changes to \$6,500.00 per month.
- Agreement for the Tenants to sublease the basement

The Tenant testified that they signed the TA with the understanding that they could sublet the Basement. The Tenant testified that they proceeded with efforts to rent the Basement and posted advertisements.

The Tenant testified that on November 15, 2024, a City representative attended the rental unit and provided a letter for the Landlord, which they forwarded to the Landlord. The Tenant stated that the Landlord advised them not to rent the Basement as they first needed to proceed with an inspection through the City. The Tenant stated that the Basement could not be rented due to illegal suite status.

The Tenant stated that in early December 2024 the Landlord and the City representative inspected the Basement, at which time the stove was removed from the Basement. The Tenant stated that thereafter the Landlord informed them that the Basement could be rented and they are to pay monthly rent of \$6,500.00 effective January 1, 2025.

The Tenant testified that the TA was signed with the option of subleasing the Basement. The Tenant stated that they can no longer do so due to the illegal status of the Basement. The Tenant stated that they would like to continue with tenancy with monthly rent of \$4,300.00, without possession of the Basement. The Tenant is seeking a rent reduction of \$2,200.00 effective January 1, 2025, and for the Landlord to take possession of the Basement.

The Landlord testified that as per the TA the Tenant had possession of the Basement effective January 1, 2025. The Landlord stated the Basement could still be rented without a cooking facility. The Landlord stated that in November 2024 they informed the Tenant of the same, and the Tenant agreed to keep the Basement as part of their tenancy. The Landlord testified that the Tenant planned to rent the Basement for higher

rent and they were confident in securing rental income from the Basement. The Landlord referred to their documentary evidence to show the Tenant's plan to paint and fix the Basement, and their advertisement of re-rental dated December 30, 2024, for monthly rent of \$2,700.00

The Landlord stated that on January 1, 2025, the Tenant stated they could not rent the Basement and they asked for credit for the month of January 2025, and stated they would pay rent of \$6,500.00 effective February 1, 2025.

## **Analysis**

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following:

### **Should the Landlord's One Month Notice(s) be cancelled? If not, is the Landlord entitled to an Order of Possession?**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed the One Month Notice 1 on January 15, 2025, and as the One Month Notice 1 was served to the Tenant on January 4, 2025, I find that the Tenant has applied to dispute the One Month Notice 1 within the time frame allowed by section 47 of the Act.

As the Tenant disputed the One Month Notice 2 on February 4, 2025, and as the One Month Notice 2 was served to the Tenant on January 26, 2025, I find that the Tenant has applied to dispute the One Month Notice 2 within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient cause to issue the One Month Notices.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notices to the Tenant and obtain an end to this tenancy.

PG 38 provides guidance on repeated late payment of rent. It states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

I find the Tenant was not repeatedly late in paying rent when they were served with the One Month Notice on January 4, 2025. There were two late payments of rent for December 2024 and January 2025, however, I find the Tenant was not late with payment of rent in November 2024.

In this case, based on the evidence before me and on a balance of probabilities, I accept the parties had engaged in negotiations for the Tenant to withhold payment of rent to account for cleaning costs. If there was no agreement for the Tenant to withhold rent, I would expect the Landlord to issue and serve the One Month Notice for all rental arrears for November 2024. However, the evidence before me shows the parties had such discussions and the Landlord agreed for the Tenant to account for certain expenses.

I accept the Tenant’s submission that such discussions were had for the cleaning costs and other expenses given the issues that arose at the start of the tenancy. I find it reasonable for the Tenant to make payment as they did based on the above. As such, I find the payment of rent for November 2024 is not to be considered a late payment.

Further, although I do not accept the limit of the e-transfer transaction to be a valid reason to withhold payment of the security deposit, I find the Landlord did not substantiate that they had sufficient cause to end the tenancy for this reason. At no time did the Landlord make a request for compliance with the payment due date of October 14, 2024. Instead, with the payment of \$3000.00, the Landlord provided keys to the Tenant for the tenancy start date of November 1, 2024. Thereafter, as noted earlier in this decision, the parties engaged in verbal negotiations and the security deposit of \$250.00 was paid on December 3, 2024. In this case, I find the Landlord waived strict compliance with the requirement for the Tenant to pay the balance of the security deposit within a certain time requirement.

With respect to the One Month Notice 2, I find the Landlord did not substantiate that the Tenant put the Landlord’s property at significant risk. The TA stated that the Tenant will agree to obtain tenancy insurance to cover damages, however, I find the tenancy insurance would provide protection to the Tenant and their belongings, such as protection of personal property and loss of use. The requirement of tenancy insurance is not for the protection of the Landlord. I would expect the Landlord to obtain their own insurance coverage for damages and protection of the rental unit.

I find the Tenant did not put the Landlord’s property at significant risk, and I find the Landlord did not provide sufficient evidence to substantiate otherwise. Lastly, in this case, the Tenant obtained tenant insurance effective February 4, 2025.

Therefore, based on the above, the Tenant's applications are granted for cancellation of the One Month Notices under section 47 of the Act.

The One Month Notice of January 4, 2025, and the One Month Notice of January 26, 2025, are cancelled and are of no force or effect. This tenancy continues until it is ended in accordance with the Act.

**Is the Tenant entitled to a Monetary Order of \$4,340.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, second, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, third, verification of the actual loss or damage claimed and fourth, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Tenant did not establish their claim for a Monetary Order of \$4,340.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act as follows:

Item 1 - \$2,150.00, as compensation for uninhabitable conditions. I find the Tenant did not prove that damage or loss exists, or that it occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement. In this case, the parties discussed and negotiated deductions at the start of the tenancy. Thereafter, the evidence shows the Landlord took reasonable steps to address concerns raised by the Tenant, which were addressed through repairs or replacement of items and appliances, and rent reduction. I find the Tenant did not prove loss, or the amount of or value of the loss for the amount claimed amount of \$2,150.00. For these reasons, this claim is dismissed without leave to reapply.

Item 2 - \$2,200.00, for compensation for rent paid in January 2025 for an illegal Basement. I find the Tenant is bound by the signed Tenancy Agreement and the obligations of that contract. Therefore, I find the Tenant is bound by monthly rent of \$6,500.00, which they paid for January 2025 and February.

I understand the Tenant's concerns with a continued tenancy without the option of subleasing the Basement with a full kitchen. However, I find the Addendum to the

Tenancy Agreement shows a possible scenario and option for the Tenant to sublease the Basement. Even if I were to accept the Tenant's argument, I find their actions supported the contrary.

In this case the Tenant attempted to sublease the Basement, even after they were informed of the City inspection and issues, however, they were unsuccessful with their attempts. I find due to these unsuccessful attempts, the Tenant thereafter asked to modify the Tenancy Agreement to relieve them of the obligation to pay monthly rent of \$2,200.00 for the Basement. I find the Tenant is responsible for the monthly rent of \$6,500.00 as per the Tenancy Agreement.

As such, I dismiss the Tenant's claim for return of rent in the amount of \$2,200.00 paid for January 2025.

**Should there be 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?**

I have already found that the Tenant is bound by the signed Tenancy Agreement and the related obligations of that contract. As such, for the same reasons noted above, I decline to award an ongoing rent reduction of \$2,200.00 per month as requested by the Tenant.

The Tenant's application for 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 is dismissed without leave to reapply.

I find monthly rent is \$6,500.00, effective January 1, 2025.

**Is the Tenant entitled to recover the filing fee(s) for their application from the Landlord?**

As the Tenant was successful in their applications for the cancellation of the One Month Notices, I grant the Tenant the \$100.00 filing fee paid for each application, for the total amount of \$200.00, under section 72 of the Act.

Under section 72(2) of the Act, the Tenant may deduct this amount from one future month's rent in full satisfaction of the recovery of the cost of the filing fees. Such a deduction is not grounds for the Landlord to issue a notice to end tenancy for non-payment of rent, as the Tenant is entitled to withhold rent when authorized by an arbitrator.

**Conclusion**

The Tenant's applications were resolved in part by mutual agreement. The parties have been ordered to comply with the terms of their mutually settled agreement.

The Tenant's applications are granted for cancellation of the One Month Notices under section 47 of the Act.

The One Month Notice of January 4, 2025, and the One Month Notice of January 26, 2025, are cancelled and are of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant is authorized to deduct \$200.00 from one future month's rent in full satisfaction of the recovery of the cost of the filing fee.

The Tenant's application for a Monetary Order of \$4,340.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed without leave to reapply.

The Tenant's application for an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is dismissed 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 Act.

Dated: March 7, 2025

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Residential Tenancy Branch