



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, CNR, CNC, MNDC, ERP, RP, RR, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord's Application requested an order of possession, and recovery of the filing fee. The Tenant's Application requested that: a Notice to End Tenancy for unpaid rent be cancelled; the Landlord make emergency repairs or repairs to the unit, site or property; a rent reduction be allowed; and a monetary order for compensation for damage or loss.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### Preliminary Matter(s)

The Tenant indicated several matters of dispute on his Application; however, there are two primary issues that are appropriate to deal with during this proceeding, the 10 Day Notice to End Tenancy for unpaid rent and the One Month Notice to End Tenancy for cause. The Tenant indicated no objection to the severing of his other issues in dispute.

Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Tenants' other disputes, emergency repairs or repairs to the unit, site or property; a rent reduction be allowed; and a monetary order for compensation for damage or loss, as set out on his Application with liberty to reapply.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession, and the filing fee?

### Background and Evidence

The Tenant and his family reside in a rental unit in a house owned by the Landlord. The rental unit consists of a basement area with a kitchen and one bedroom and an area up a flight of stairs consisting of a second bedroom and two bathrooms. Neither party to

the proceeding provided a copy of a tenancy agreement between the parties, however the Landlord confirmed that they do not share a kitchen or bathroom with the Tenant and they have a separate address from the Tenant. The parties do not dispute that they have a tenancy agreement.

The parties agree that on September 26, 2011 around 3:00 P.M. a flood occurred on the Landlord's property and water flowed into the basement portion of the rental unit, but the upstairs of the rental unit was not affected. The Landlord was promptly informed by the Tenant and contacted their insurance company. The Tenant stated that he does not have his own insurance. The Landlord confirmed that they have insurance and filed a claim immediately. The insurance company sent out a restoration company, WRS, to deal with the Landlord's claim. The restoration company, WRS, promptly attended the rental unit and began to dry the basement area and remove carpet, drywall and other damaged areas, and use a heater and dehumidifier to absorb the moisture. The parties agree that the restoration company, WRS, was in the rental unit for several days, however, they had to cease work on the rental unit as they discovered other water damage and an open pipe under the floor that was pre-existing and unrelated to the September 26, 2011 flood incident and insurance claim.

The Tenant stated that he received a 10 Day Notice to End Tenancy from the Landlord on October 10, 2011, which was dated October 08, 2011. The Tenant stated that he paid the outstanding rent requested by the Landlord after receiving the 10 Day Notice. The Landlord testified that they received the rent from the Tenant and were satisfied and the 10 Day Notice was not proceeded with as a result. The Landlord stated that it is the One Month Notice to End Tenancy for cause that they are proceeding with as they feel it is a health hazard for the Tenant to remain in the rental unit and that further renovations need to occur. The Landlord testified that she personally served the One Month Notice to End Tenancy for cause on the Tenant on the evening of September 27, 2011. The Landlord also testified that she was informed by her insurance company and the restoration company, WRS, that a pre-existing issue under the floor of the basement area was not covered by her insurance. The Landlord testified that this was when they determined that the Tenant needed to move out of the rental unit so that the work could be done, and she issued the One Month Notice to End Tenancy for cause.

The Tenant testified that he was not served with a One Month Notice to End Tenancy for cause, and if he had, he would have filed an application to dispute it immediately. He indicated that the only Notice he received from the Landlord was the 10 Day Notice. The Tenant also testified that the restoration company, WRS, was in the basement area of the rental unit for several days and they managed to work around him. He stated that he was satisfied to live in the upstairs area of the rental unit and that he was still able to access his kitchen while the restoration work was occurring. The Tenant stated that he wished to remain in the rental unit while the work is being done as his children are enrolled in school nearby and he does not wish to move and it is difficult to find suitable affordable accommodation in the area. The Tenant stated that he wants the Landlord to go ahead and get the uninsured work in the basement area completed and he does not understand why it is taking so long to get done. The Tenant states that he spoke to the

manager of the restoration company, WRS, and they did not indicate that he needed to move out and they were fine with him remaining in the upstairs of the rental unit with him using the kitchen as needed. The Tenant stated that he moved his couch and some other furniture out of the way for the restoration company when they were doing their work and that he was cooperative with them.

The Landlord states that it is unsafe and dangerous for the Tenant to live in the rental unit while the renovation work is occurring, and that there is no guarantee he will be able to use his kitchen area. The Tenant disagrees and feels it will not be a problem and that he can work with the renovation company to manage this issue and use the kitchen after hours, just as he did when the restoration company, WRS, was in the rental unit doing their work after the flood.

The Landlord submitted a package containing 23 pages of evidence on October 25, 2011 to our office with copies of estimates for restoration work all of which are dated after September 27, 2011. There are two written estimates from WRS one dated October 5, 2011 and one dated October 12, 2011 both of which are unsigned by the company. Neither of these written estimates state that the Tenant must move out of the rental unit. There is also a letter from another restoration company dated October 19, 2011; however, this unsigned letter contains no estimate. The unsigned letter of October 19, 2011 says that the basement must be free of furnishings and other people for eight weeks so the workers can do their work safely. The letter makes no mention of whether the Tenant can remain in the upstairs area of the rental unit or whether he can access the kitchen during non-working hours.

The Tenant objects to these letters and any of the 23 pages of evidence submitted by the Landlord and states that the Landlord did not provide him with copies of these documents for his consideration prior to the hearing. The Landlord's son, who did not attend the hearing, provided a written letter prior to the hearing stating that he had served these on the Tenant on October 26, 2011 at 3:00 PM. The Tenant stated that he has also not seen a copy of this letter from the Landlord's son, and all he was served with by the Landlord's son was a copy of the Landlord's Application and the Notice of Hearing on October 26, 2011. The Landlord's son did not attend the hearing, so it was not possible to cross examine him on the service of the Landlord's Application.

The Tenant wants any Notice to End Tenancy from the Landlord to be cancelled. The Landlord stated that they are seeking an order of possession plus the filing fee for this application.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has provided insufficient evidence of proof of service of the One Month Notice to End Tenancy on September 27, 2011 on the Tenant other than her oral

testimony. I also find that the Landlord's oral testimony contains contradictions. I do not find it credible that the Landlord knew as early as September 27, 2011 whether or not the Tenant needed to move out for renovations. All of the estimates provided by the Landlord are dated after that date, none of them are signed, and none of them specifically state that the Tenant must vacate the entire rental unit including the upstairs or that he will be unable to use his kitchen after work hours.

I also note that the Landlord's reasons, stated during the hearing, for issuing the One Month Notice are not supportive of that sort of a Notice. The Notice a Landlord would issue when renovations require the Tenant to move out, would be a Two Month Notice for Landlord's Use of Property under section 49(6) of the Act. The Landlord has presented no evidence from the City or the Health Authority that the Tenant or his family are in danger by remaining in the rental unit during the renovations and the Landlord has provided no evidence of the necessary permits required to undertake the repairs.

After careful consideration of the evidence of both parties, I find that the Tenant was not properly served with the One Month Notice to End Tenancy for Cause, dated September 27, 2011, in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. I also find that the Landlord accepted the rent from the Tenant as a result of the 10 Day Notice and invalidated that Notice. The Landlord also stated during the hearing that they were not pursuing the 10 Day Notice.

As the Landlord's Application was not successful I am denying their request for recovery of the filing fee.

### Conclusion

The Tenant's other issues in dispute: that the Landlord make emergency repairs or repairs to the unit, site or property; a rent reduction be allowed; and a monetary order for compensation for damage or loss, as set out on his Application are dismissed with liberty to reapply.

I find that there is currently no Notice ending the tenancy in force or effect, and I am granting the Tenant's request that any Notices to End Tenancy issued by the Landlord prior to November 04, 2011, the date of this hearing, be cancelled.

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: November 10, 2011.

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Residential Tenancy Branch