



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE ADVANCE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, MNR

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to cancel a 10 day Notice to End Tenancy for unpaid rent, for a monetary order for the cost of emergency repairs and for compensation under the Act or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

The Tenant testified he wanted an adjournment in order to receive further evidence. The Tenant withheld one half of one months' rent in January of 2014, because he felt the heating bill was too high at the rental unit and the Landlord did not have working smoke detectors in the rental unit until he installed batteries in these or bought new one in November of 2013. The Tenant was waiting for a gas bill which he alleges would show that he has been paying too much for heat in the rental unit. The Tenant testified he had not got the bill on time to submit within the five day deadline, under the rules for procedure for submitting evidence.

I explained to the Tenant that no adjournment would be granted for this, since he would have had to have submitted this bill to the Landlord in December of 2013, in any event, prior to withholding rent for emergency repairs.

### Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

Is the tenancy ending due to unpaid rent?

### Background and Evidence

The Agents for the Landlord testified that the monthly rent for the unit is \$1,400.00 per month, payable on the first day of the month.

The Agents testified that on December 31, 2013, or early in January of 2014, the Tenants dropped off a letter to their office indicating he wanted to be reimbursed for 2 smoke alarms and 1 carbon monoxide unit he purchased and installed in the rental unit in early December of 2013, and he wanted reimbursement for high heating gas bills he had paid and for one or two other items. The Tenants then withheld \$700.00 from the January 2014 rent.

The Agents testified they served the Tenant with a 10 day Notice to End Tenancy for unpaid rent of \$700.00 on January 6, 2014, in person. This is the Notice the Tenant disputes in this Application.

The Agents further testified and submitted evidence that the Tenants had been late paying rent four times since the tenancy started in April of 2013. The Agents initially stated the Tenant paid his rent for February of 2014 late; however, they corrected this and testified he had paid his February rent on time.

The appearing Tenant testified he had a number of problems with the rental unit, most importantly, with the lack of heat coming from the furnace. He testified that it was ultimately determined that the furnace was sending a lot of the heated air it was producing into the garage. A vent had been adjusted and then the furnace began heating the home better.

The Tenant testified he does not have the last heating bill from the gas company yet to show the increase cost of heating the rental unit. The Tenant explained they had to use the gas stove to heat portions of the rental unit. He said he just got in the night before the hearing and did not have time to organize for it. He further testified he wanted to submit this bill but had just got it recently and was told he could not submit it because it was past the five day deadline to submit evidence.

The Tenant agreed the Tenants had held back rent. They felt they should be compensated for the large heating bills, the smoke alarms and the carbon monoxide alarm.

The Agents for the Landlord testified that when the Tenant paid the rent in February of 2014, they did not issue a receipt indicating the money was being accepted for use and occupancy only.

### Analysis

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

I find the January 2014 Notice to End Tenancy is valid and should not be cancelled; however, the Landlord has reinstated the tenancy by not informing the Tenants they accepted the rent money for February for use and occupancy only.

I find the 10 day Notice to End Tenancy was valid. The Tenants withheld the rent with any right or authority under the Act to do so.

Under section 26 of the Act the Tenants must pay the rent on the date it was due, even if the Landlord is in breach of the Act or the tenancy agreement, unless the Tenants had an order from the Branch allowing them to do so, or, if the Tenants had made emergency repairs.

Section 33 sets out emergency repairs as follows:

**“33** (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
  - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
  - (c) made for the purpose of repairing
    - (i) major leaks in pipes or the roof,
    - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
    - (iii) the primary heating system,
    - (iv) damaged or defective locks that give access to a rental unit,
    - (v) the electrical systems, or
    - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
  - (a) emergency repairs are needed;
  - (b) 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;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
  - (a) claims reimbursement for those amounts from the landlord, and
  - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
  - (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
  - (c) the amounts represent more than a reasonable cost for the repairs;
  - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount."

[Reproduced as written.]

In this situation the repairs made by the Tenants do not qualify as "emergency repairs". The heating system was still functioning, although it was not producing sufficient amounts of heat in the correct areas. The Landlord had sent out repair persons in a timely manner when asked by the Tenants and they found the furnace to have been

functioning as normal. Nevertheless, the furnace was heating the garage rather than the unit to some extent.

In any event, the Tenants have not followed the steps as set out in the emergency repairs provisions: for example, they have not provided the Landlord with a receipt showing they paid for emergency repairs as defined in section 31(1).

The Tenants simply want some compensation for increased heating bills. **This does not entitle them to withhold the rent. Therefore, the Tenants must pay the Landlord the entire amount of rent due for February 2014.** If the Tenants fail to do this the Landlord has liberty to issue another 10 day Notice to End Tenancy.

The Tenants may still make an Application for any losses they can prove they suffered due to the furnace system or otherwise during the tenancy; however, they have no right or authority to withhold rent.

Therefore, I find the Notice to End Tenancy was valid and should not be cancelled.

Nevertheless, the Landlord should have notified the Tenant that although payment for February was accepted, it was for use and occupancy only and not to continue the tenancy. Therefore, the tenancy will continue until ended in accordance with the Act.

At the end of the hearing the parties also discussed the issue of repeated late payment of rent. It was explained that the Landlord may issue a one month Notice to End Tenancy for cause if the Tenants have been repeatedly late paying rent. The parties were unable to resolve or settle this issue and therefore, the hearing was concluded.

Conclusion

Although the 10 day Notice to End Tenancy is valid and not cancelled, the tenancy is not ending as the Landlord accepted rent and did not inform the Tenants this was for use and occupancy only, thereby reinstating the tenancy.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 27, 2014

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Residential Tenancy Branch

