



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, RP, PSF, LRE, AAT, LAT, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. The landlord did not submit any documentary evidence.

The landlord's counsel, S.A. appeared on behalf of the landlord M.R. and agent for counsel C.M. representing, the landlords, M.K. and M.T. S.A. requested an adjournment on behalf of C.M. due recently to being retained and due to a scheduling conflict for court. The tenant's counsel, J.C. consented to the adjournment that there would not be any prejudice to either party for the adjournment. The hearing was adjourned to March 18, 2015 at 9:00 am.

On March 18, 2015 at 9:00 am the hearing was reconvened with all parties present. All parties participated and provided testimony.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenants have applied for an order for the landlord to comply with the Act, for an order for the landlord to make repairs, for an order for the landlord to provide services or facilities, for an order to suspend or set conditions on the landlord’s right to enter the rental unit and an order allowing the tenant access to or from the rental. The tenant’s counsel stated that these were secondary issues unrelated to unpaid rent. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant’s claim with leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

#### Background and Evidence

Both parties confirmed in their direct testimony that no signed tenancy agreement was made. Both parties confirmed a monthly rent rate of \$3,600.00 and that continued tenancy began in November of 2012.

Both parties confirmed that the landlord served the tenant with a 10 day notice to end tenancy issued for unpaid rent dated January 8, 2015 in person on the same date. Both parties confirmed that the contents of the notice state the tenants failed to pay rent of \$33,000.00 that was due on August 1, 2014. The notice also displays an effective end of tenancy date of January 20, 2014. Both parties confirmed that the effective end of tenancy date was incorrect and noted that the year should have been 2015 and that there would be no prejudice regarding the date.

The tenants disputed the notice of the landlord and that rent was not owed and that there was a credit balance from advance payments of rent to the landlord.

The landlord stated that the amount owed on the notice of \$33,000.00 is based upon the invoice dated August 31, 2014 that displays a balance owing from July 2014 of \$67,920.00 plus \$3,600.00 for August 2014 for a total balance owing of \$71,520.00.

The landlord stated that they are relying on calculations (not included in evidence) that this amount was offset against prepayment of rent.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that the landlord has failed to meet his burden of proof to show that the tenants owed rent as of August 1, 2014 for \$33,000.00. I reached this conclusion based on the conflicting evidence of the parties as well as the landlord's own confusion as to the amount of rent arrears and their calculation. The tenants confirmed in their direct testimony that no rent arrears existed and that a credit balance is owed.

The tenant's application to cancel a notice to end tenancy dated January 8, 2015 is granted. The notice is set aside and the tenancy shall continue.

Having been successful, the tenant is entitled to recovery of the \$50.00 filing fee. I grant a monetary order of \$50.00 to the tenant. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The tenant may choose to offset this amount one-time against any future rent owed.

### Conclusion

The tenant's application is granted. The notice to end tenancy dated January 8, 2015 is set aside. The tenancy shall continue.

The tenant is granted a monetary order for \$50.00.

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: March 19, 2015

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Residential Tenancy Branch

