



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedure Matters

After confirming service of hearing documents upon each other I reviewed the Application with the parties and informed the parties as to how the hearing would be conducted. I also informed the parties that submissions would be limited to those relevant to the matter(s) at hand.

I determined that one of the co-applicants is not a tenant. The tenant introduced this person as being her "support person" and indicated that he would make submissions on her behalf during the hearing. The landlord questioned whether the tenant's support person is a lawyer. The tenant's support person identified himself as being the tenant's legal counsel and financial adviser but stated that he is not a lawyer. The tenant's support person has been excluded as a party to the dispute as he does not have standing as a tenant but his appearance was permitted and reflected as being the tenant's representative.

The tenant's representative sought to introduce allegations of breach of the Act that were not identified on the Application for Dispute Resolution or the tenant's written submissions that accompanied the Application served upon the landlord. Section 59 of the Act requires that an applicant provide full particulars of the dispute. This requirement is in keeping with the principles of natural justice which provide that a respondent is entitled to be notified of the nature of the dispute so as to prepare a response or defence to the allegations. I refused the tenant's representative to make

allegations of breach that had not been identified on the tenant's Application or written submissions as to do so would be procedurally unfair. The tenant and her representative were informed that any matters not deal with under this Application may be resolved by way filing another Application for Dispute Resolution if the parties are unable to resolve the dispute themselves. However, I also strongly encouraged the parties to first educate themselves as to the rights and obligations provided under the Act.

The tenant's representative also sought to obtain monetary compensation from the landlord in the amount of \$2,200.00 pursuant to an alleged agreement between the parties. I noted that the tenant had not indicated she was seeking a Monetary Order on her Application. Further, the written submission indicated that there was an agreement for the tenant to paint the rental unit in exchange for a rent reduction and/or reimbursement of supplies but the amounts appearing in the written submission vary and in no place does it indicate the tenant is seeking \$2,200.00 from the landlord. I also determined that the rent that the tenant had withheld has since been paid to the landlord. I informed the tenant that she retains the right to seek a Monetary Order by making another Application and I did not permit this application to be amended to deal with a Monetary Order as I found the landlord had not been sufficiently notified that such a request would be considered during this hearing and certainly not a request for \$2,200.00.

As the hearing progressed it became very apparent that the tenancy relationship between the landlord and the tenant and her representative is very strained and unsuccessful. Nevertheless, after dealing with the matters identified in the Application, the parties were given the opportunity to ask questions. Unfortunately, the tenant's representative and landlord tried to use this opportunity to engage in further dispute despite my numerous requests to limit submissions to issues relevant to the Application before me. Given the conduct of the parties and having been satisfied that I had addressed the matters identified on the Application I stopped the exchange between the parties and I ended the teleconference call.

#### Issue(s) to be Decided

Has the tenant established that the landlord breached the Act, regulations or tenancy agreement and is it necessary to issue orders for compliance to the landlord?

### Background and Evidence

The parties executed a fixed term tenancy agreement for a tenancy set to commence November 1, 2015 for the monthly rent of \$1,700.00 due on the first day of every month. The tenants paid a security deposit of \$850.00 and a pet damage deposit was not paid.

The tenant asserted that the landlord has threatened to evict the tenant. The tenant initially testified that the landlord served her with a 10 Day Notice to End Tenancy via email. The landlord acknowledged demanding the tenant pay rent via email but he stated that he did not issue a 10 Day Notice to End Tenancy for Unpaid Rent in the approved form. The tenant acknowledged that the notice she received via email was not a Notice to End Tenancy in the approved form and that she paid the rent demanded of her although she remains in disagreement that she owed rent for November 2015.

The tenant asserted that in January 2016 the landlord went to an ATM and deposited a cheque in the amount of \$850.00 dated January 1, 2016 and a cheque in the amount of \$850.00 dated February 1, 2016. The tenant considers this action to be fraud; however, the tenant acknowledged that she did not contact her bank to have the February 2016 cheque reversed.

The landlord explained that each of the co-tenants provided him with post-dates cheques in the amount of \$850.00 and when he went to deposit the January 2016 rent cheques he accidentally took two of the tenant's cheque and put them in the ATM. The landlord was surprised to discover his bank and the tenant's bank processed the February 2016 cheque. The landlord stated that upon discovering what had happened the landlord apologized to the tenant for the error.

### Analysis

Upon consideration of the relevant submissions before me, I provide the following findings and reasons.

The Act provides that a tenant is required to pay rent in accordance with their tenancy agreement unless the tenant has a legal right under the Act to withhold all or part of the rent that is payable. The Act provides very limited and specific circumstances when a tenant may withhold rent. The Act also provides that if a tenant fails to pay rent that is due the landlord is entitled to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Clearly, the parties are in dispute as to whether the tenant had a right to withhold rent from the landlord for November 2015 for painting she did in the rental unit; however, I

find the landlord's communication to the tenant that he would serve her with a Notice to End Tenancy if she does not pay rent pursuant to the tenancy agreement is not a threat since it is a remedy afforded the landlord under the Act when rent is not paid.

Considering the tenant has paid the rent that has been demanded of her, should the tenant remain of the position that the landlord has collected more rent than he is entitled to under the Act, regulations or tenancy agreement the tenant still has a remedy available to her as indicated earlier in this decision. The tenant retains the right to seek a Monetary Order or an Arbitrator's authorization to withhold a specific amount from rent by filing another Application and providing full particulars of the remedy sought. Given these circumstances, I find it unnecessary to issue an order for compliance to the landlord.

With respect to the rent cheque that was deposited prematurely, I find the landlord provided a reasonable explanation that this occurred in error and I am satisfied that it will not happen again. I further note that the tenant had a remedy available to her which was to contact her bank and have the cheque reversed but she did not do so. In these circumstances, I find it unnecessary to issue an order for compliance to the landlord.

In light of the above, I dismiss the tenant's Application and I make no award for recovery of the filing fee.

### Conclusion

The tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement has been dismissed.

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 23, 2016

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Residential Tenancy Branch

