



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, RP, RR, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”), or tenancy agreement, an Order for repairs to be completed, and a rent reduction due to repairs, services, or facilities not provided, as well as the recovery of the filing fee paid for this application.

The Tenant and the Landlord were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant stated that he received the Landlord’s evidence package six days prior to the hearing.

Although rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* states that the respondent’s evidence must be received not less than 7 days prior to the hearing, it was confirmed with the Tenant that he had a chance to review the Landlord’s evidence. As such, it was decided that the evidence of both parties would be accepted and included as part of this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

During the hearing, the Tenant submitted that he was no longer seeking a reduction in rent due to repairs not being completed and would like to withdraw this claim from his application. Pursuant to Section 64(3)(c) of the *Act*, the Application for Dispute Resolution was amended to remove the claim for a rent reduction.

### Issues to be Decided

Should the Landlord be ordered to comply with the *Act*, *Regulation* or tenancy agreement?

Should the Landlord be ordered to complete repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties provided testimony on the tenancy which was confirmed by the tenancy agreement. The tenancy began on December 13, 2015. Current monthly rent is \$1,132.00. A security deposit of \$525.00 and a pet damage deposit of \$525.00 were paid at the outset of the tenancy.

The Tenant applied for an Order for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement. He stated that this was regarding repairs that were needed in the rental unit that had not been completed and also regarding a dispute over whether the tenancy was ending.

The Landlord provided testimony that the Tenant came into the office on October 1, 2018 and stated that he would be moving out at the end of the month. That same day, the Landlord sent a text message to the Tenant and asked if the Tenant was moving out. The Tenant replied that he was moving out on November 1<sup>st</sup>. The Landlord responded by stating that he accepted the text as the termination of the Tenant's lease. The Tenant responded again on October 1, 2018 and said that he needed three months to move out.

On October 15, 2018, the Landlord provided the Tenant with a letter confirming that he accepted the Tenant's termination notice by text. He also gave the Tenant a Mutual Agreement to End Tenancy form. This agreement was submitted into evidence stating the tenancy would end on October 31, 2018. The document was unsigned by the Tenant which was confirmed by both parties.

The Landlord stated that he met with the Tenant on November 15, 2018 to discuss coming to an agreement about ending the tenancy, but an agreement was not reached.

The Tenant was in agreement that he sent the text message to the Landlord regarding moving out on November 1<sup>st</sup> but stated that he was upset at the time and it was not an official notice. He submitted that the text did not include a year and that it may have meant 2019.

The Tenant testified that he did not sign the Mutual Agreement and that no agreement was reached as to when the tenancy will end. The Tenant stated that he has not received a notice to end tenancy from the Landlord.

The Tenant testified as to three repairs that were required in the rental unit; a broken knob on the washing machine, a broken knob on the dryer and the toilet that needs a new chain in order to flush properly.

Although the parties presented conflicting testimony on whether the Landlord had been properly notified of the need for these repairs, and provided with an opportunity to fix the issues, the parties came to a Settlement Agreement during the hearing. The agreement regarding repairs will be outlined below.

### Settlement Agreement

Section 63 of the *Act* states that the parties may be provided an opportunity to settle their dispute and for that settlement to be recorded in the form of a decision or order. As the parties came to a settlement agreement regarding the Tenant's claim for repairs in the rental unit, they agreed to the following terms:

1. The Landlord will attend the rental unit to assess the repairs needed and confirm what parts may be required.
2. The Landlord will purchase and install a new knob for the washing machine.
3. The Landlord will purchase and install a new knob for the dryer.

4. The Landlord will purchase and install a new chain for the toilet.
5. The Tenant will provide reasonable access to the rental unit for the above repairs to be completed.
6. The Landlord will complete the repairs by the end of the day on November 30, 2018.

The parties both confirmed that they were entering into this settlement agreement voluntarily and were in agreement to the terms. They also confirmed their understanding of the final and binding nature of a settlement agreement in the same manner as any decision or order made through a Dispute Resolution Proceeding.

### Analysis

The Tenant applied for an Order for the Landlord to comply which was regarding both the repairs and the tenancy ending. I find that the issue with the repairs were fully resolved through the Settlement Agreement outlined above.

As for whether the Tenant provided notice to end tenancy or whether a mutual agreement to end the tenancy had been reached, I refer to Section 45 of the *Act*.

Section 45(1) of the *Act* states the following:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
  - (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Although the tenancy agreement was initially signed for a fixed term, I have no evidence before me that another fixed term was entered into and therefore find that this is a periodic, or month-to-month tenancy. Therefore, notice on October 1, 2018 would have ended the tenancy at the end of November, as rent is due on the first of each month.

However, I also refer to Section 45(4) of the *Act* which states that a notice to end tenancy provided by the tenant under this section must be in compliance with Section 52 of the *Act* which states the following:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I find that the text message sent to the Landlord on October 1, 2018 stating that the Tenant was moving out on November 1, 2018 does not comply with Section 52 of the *Act*. The message was not signed and dated by the Tenant and did not include the address of the rental unit.

Although the parties have established communication through text message, I note that this is not a method of service under Section 88 of the *Act*.

Regarding the Mutual Agreement to End Tenancy that the Landlord provided to the Tenant, in accordance with Section 12(5) of the *Regulation*, the parties may mutually agree in writing to end the tenancy. Although I find it reasonable that the Landlord would provide the Tenant with a Mutual Agreement form given that the Tenant indicated his intent to move out through a text message and in person, the Mutual Agreement form was not signed by the Tenant.

Therefore, I find that the Tenant did not provide notice to end the tenancy pursuant to Section 45 of the *Act*, and the parties did not mutually agree that the tenancy will end pursuant to Section 12 of the *Regulation*.

Although the Tenant applied for an Order for the Landlord to comply, I do not find it necessary in this situation to make any orders. Instead, both parties are reminded to follow the *Act* and *Regulation* should either choose to end the tenancy.

As the parties came to a settlement agreement regarding repairs, I award the Tenant the recovery of half of the filing fee in the amount of \$50.00, pursuant to Section 72 of the *Act*. The Tenant may deduct \$50.00 from his next monthly rent payment.

Conclusion

The parties are ordered to follow the terms of the Settlement Agreement outlined in this decision.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$50.00 one time from the next monthly rent payment, as recovery of half of the filing fee paid for the Application for Dispute Resolution.

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 23, 2018

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Residential Tenancy Branch