



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR-MT, RR, RP, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed March 8 (the “10-Day Notice”) and an order pursuant to s. 66 for more time to do so;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs; and
- return of the filing fee pursuant to s. 72.

G.S.P. appeared as the Tenant. The Landlord did not attend the hearing, nor did someone attend on their behalf.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that he served his application and evidence on the Landlord by way of registered mail sent on March 20, 2023. The Tenant provides a copy of a registered mail receipt dated March 20, 2023 as proof of service. I find that the Tenant served his application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant’s application materials on March 25, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 9:49 AM without the Landlords’ participation.

### Preliminary Issue – Cancellation of the 10-Day Notice

Rule 6.6 of the Rules of Procedure sets out the standard and onus of proof on applications. It specifies that generally an applicant bears the burden of proving their claim except under certain circumstances, such as when a tenant files to dispute a notice to end tenancy, in which case the onus of proof rests with the respondent landlord.

I am advised by the Tenant that he received the 10-Day Notice on March 13, 2023 as he was away from home on March 8, 2023. Though the Tenant did file for more time to dispute the 10-Day Notice, I find that this was unnecessary. Section 46(4) of the *Act* permits tenants to file an application disputing a notice for unpaid rent provided they do so within 5 days of receiving the notice. In this instance, I accept that the Tenant received the 10-Day Notice on March 13, 2023. Review of the information on file shows he filed his dispute on March 14, 2023. In other words, he filed his application on time.

The Landlord did not attend the hearing to present evidence to support why the 10-Day Notice was issued. Accordingly, I find that the Landlord has failed to prove the 10-Day Notice was issued in compliance with the *Act*. Given this, the 10-Day Notice is hereby cancelled and is of no force or effect.

### Issues to be Decided

- 1) Should the Landlord be ordered to undertake repairs?
- 2) Is the Tenant entitled to a rent reduction?
- 3) Is the Tenant entitled to his filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Tenant confirms the following details with respect to the tenancy:

- He moved into the rental unit in July 2022.
- Rent of \$5,000.00 is due on the first of each month.
- A security deposit of \$2,500.00 was paid to the Landlord.

I) Tenant's Repair Claim

At the hearing, the Tenant described various leaks causing damage and mould within the rental unit. I am told that he advised the Landlord of leaks in the roof, shower, septic pump, and washing machine. The Tenant says that he notified the Landlord of these issues and that nothing was done and that he had to hire someone himself to repair the shower leak.

Section 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

In this instance, the Tenant provides no photographs of the damaged areas. I am told he notified the Landlord of this damage all the time but could not recall when the maintenance issues first presented themselves. I am told by the Tenant that he texted the Landlord about these maintenance issues. The Tenant has provided no text messages in support of his application.

I find that the Tenant has failed to demonstrate any maintenance issues are present. I would expect if this was the case, I would have correspondence to this effect or photographs. The Tenant has provided neither. Due to the lack of evidence before me, I dismiss the Tenant's application seeking an order for repairs under s. 32 of the *Act* without leave to reapply.

II) Tenant's Rent Reduction Claim

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

Given my finding above that the Tenant has failed to prove a repair issue is present, I further find that the Tenant has failed to show the Landlord breached s. 32 of the *Act*. On this basis, the Tenant's claim for rent reduction must fail. It is dismissed without leave to reapply.

Conclusion

I grant the Tenant's application cancelling the 10-Day Notice, which is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

I dismiss the Tenant's claim for repairs under s. 32 of the *Act* without leave to reapply.

I dismiss the Tenant's claim for a rent reduction under s. 65 of the *Act* without leave to reapply.

I find that the Tenant has had mixed success in his application. Given this, I find he is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

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: April 19, 2023

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Residential Tenancy Branch