



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNR, LAT, MNDC & FF

## Introduction

Having heard the evidence of the parties, under affirmation, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, and to cross-examine the other party, and to make submissions to me, I have determined:

## Issue(s) to be Decided

This is a request to have a section 46 Notice to End Tenancy cancelled, a request to change the locks in the rental unit and a request for a monetary order for \$300.00 and a request for an order for the respondent to pay the filing fee paid for this hearing.

## Background and Evidence

The landlord served the tenants with a 2 month Notice to End Tenancy under section 49 of the Residential Tenancy Act, for landlord use and as a result the tenants withheld the December 2008 rent as allowed under section 51 of the Residential Tenancy Act.

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

The landlord has served the tenant with a section 46 Notice to End Tenancy for non-payment of December 2008 rent and the applicant is asking to have the notice set aside.

The applicant was also asking for an order allowing her to change the locks in the rental unit, claiming that the landlord is threatening to enter and remove all her possessions for failing to pay the December 2008 rent; however at the hearing the tenant stated that she no longer requires an order to have the locks changes because the landlord assured her that they would not attempt the remove her belongings.

The tenant is however asking for an order for \$300.00 claiming that cable TV was supposed to be included in her tenancy, but was not.

The respondent testified that the reason that the 10 day notice was given was because it was their understanding that in a fixed term tenancy the tenant was not allowed to withhold the last months rent, that it was supposed to be paid first and then refunded by the landlord at the end of the tenancy.

The respondent further stated that they will not attempt to remove any of the tenant belongings from the rental unit.

The respondent further stated that the tenant was given a \$50.00 reduction in the rent when they were no longer able to provide cable service to the tenant.

The applicant claimed that the \$50.00 reduction was because the landlord did not have to provide internet service, but that cable TV service was still to be provided.

### Analysis

Section 51 of the Residential Tenancy Act allows the tenant to withhold the last months rent when they receive a section 49 Notice to End Tenancy. Therefore the 10 day notice given by the landlord is not a valid notice.

I find; however that the \$50.00 rent reduction given by the landlord is a reasonable reduction in rent for no longer being able to provide cable TV or internet service.

### Conclusion

The section 46 10 day Notice to End Tenancy is cancelled and I further order that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

The claim for \$300.00 for loss of cable TV is dismissed.

December 22, 2008

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Date of Decision