



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, FF, MNSD, (MNDC)

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, for a Monetary Order for the return of her security deposit and pet damage deposit, and to recover the filing fee for this application. The tenant has extended her claim to request a Monetary Order for money owed or compensation for loss or damage under the Act.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were posted in the mail box at the landlord's given address on, May 19, 2009. The tenant had three days from filing her application to service of the hearing and evidence documents. The tenant was one day late in serving these documents as she was unsure of the landlords' correct address as the landlord did not provide a written tenancy agreement at the outset. Due to this I will allow the one day delay in service of the hearing documents. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party and witnesses, and to make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

## Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Whether the landlord is entitled to an Order of Possession?
- Is the tenant entitled to any compensation for repairs and loss of use of cooking facilities?
- Is the tenant entitled to the return of her security and pet damage deposit?
- Are there arrears of rent and if so, how much?

## Background and Evidence

This tenancy started on March 31, 2009. Rent was \$750.00 per month payable on the 1<sup>st</sup> of each month. The tenant claims she has paid a security deposit of \$350.00 in cash on March 14, 2009 and a pet damage deposit of \$200.00 on March 24, 2009. The tenant testifies that she did not get a receipt on either occasion despite asking the landlord for receipts numerous times. The tenant paid \$400.00 towards her rent for April and withheld \$350.00 until the landlord gave her receipts for the rent and security deposits she had already paid.

The tenant testifies that when she viewed the rental unit there were a number of repairs that needed to be carried out and was told by the landlord that these would be completed before she moved in. The tenant testifies that there is a two foot wide hole in the outer wall which has been covered with a bag and taped over. There is bare dry wall in the bedroom, hall and living room. There are open vents in the ceiling for the heating. There is no heating coming through to the rental unit. The shower leaks as there is no chalking around the shower. The baseboards are falling off in the bathroom. The solarium window leaks and has not been fitted correctly. The carpet is not new and

requires cleaning. The furnace and hot water unit have been blocked off and are a safety hazard. There is bare wood showing from the outside wall which has not been covered or painted. There is no sound insulation between her unit and the unit upstairs making it very noisy to live in the downstairs unit. There are electrical surges and the tenant can not use her dryer if another tenant is using hers. The tenant also testifies that a city by-law and enforcement officer/license inspector came to look at the rental unit and told the tenant that the landlord had been informed that no cooking facilities were allowed in the unit and the tenant was not to use the stove. The tenant testifies that when she viewed the unit the landlord told her that it was a fully working kitchen. The tenant testifies that the landlord told her he was working in the house but no work has been carried out to rectify the repairs required.

The tenant testifies that on the day she moved into the rental unit she realized that the repairs had not been carried out and the unit was unsuitable for her and her son to live in. She told the landlord that she wanted to move out and asked him to return her security deposits. The tenant testifies that the landlord refused to do this and she had no option but to continue to live in the unit as she did not have the funds available to move out. The landlord did not carry out a move in condition inspection report at this time. The tenant testifies that the landlord has never given her a tenancy agreement and when the landlord produced one in his evidence package this was the first time she had seen it and it was unsigned by either party.

The landlord testifies that the tenant did not pay either security deposit. He testifies that there is nothing wrong with the rental unit as he has put in brand new carpets and painted the unit and the only work required was to paint a door. The landlord testifies that the heating works all around the whole house and the furnace is in top condition. The landlord testifies that he did not give the tenant a receipt for her rent as it was not the full amount due. The landlord testifies that the tenant told him she wanted to move

out because it was too loud upstairs. He testifies that he told the tenant she could move out when she had paid the rest of the rent owed of \$350.00. The landlord told the tenant if she did not pay the rent he would give her an eviction notice.

The landlord testifies that the tenant had three opportunities to view the rental unit before she moved in and if she didn't like it she should not have moved in. The landlord testifies that he has rented the unit for four years and had no complaints from previous tenants.

The tenant disputes the landlord testimony and asked her neighbour to be a witness to events. The witness gave his affirmed testimony and testifies that he has not been inside the rental unit to confirm the repairs that the tenant says are required. However, he testifies that the outside of the rental unit has not had repairs carried out and he disputes the landlords' testimony about never having any complaints from previous tenants. The witness testifies that the building has had numerous tenants over the four years and they move out quickly due to the state of the rental unit. The rest of the witness's evidence was not heard as it is based on hearsay and not facts that he can substantiate himself.

The landlord disputes this witness's evidence. He testifies that 'this neighbour is my enemy and his evidence is biased'.

## Analysis

The Landlord did not provide the tenant with a copy of a written tenancy agreement within 21 days therefore it is presumed that the agreement was verbal. Based on this it is also presumed that the landlord and tenant had a verbal agreement that the landlord

would complete the required repairs before the tenant moved into the rental unit and carry out his obligations under section 32 of the Act.

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

From the evidence given by the tenant I find that the landlord has failed to carry out repairs to the rental unit and is breach of this section of the Act; I find that the tenant is entitled to compensation for these repairs that have not been completed.

The landlord told the tenant that she would have a fully working kitchen in which to prepare and cook meals for herself and her son. The tenant is unable to do this as the city by-law and enforcement officer/license inspector had told the landlord that the unit was not to have cooking facilities. When the unit was re-inspected by the city officer he told the tenant she was not allowed to use the stove in the rental unit. The tenant has had to make other arrangements for eating and has had to bear the cost of eating out with her son; I find that she is entitled to compensation from the landlord for the loss of this facility.

### **Terminating or restricting services or facilities**

**27** (1) *A landlord must not terminate or restrict a service or facility if*

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*(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation.*

Due to a lack of evidence from the tenant about the amount of money she has paid to the landlord as security deposit and pet damage deposit I can not make a ruling in this matter and this section of her application is dismissed with leave to reapply.

Pursuant to section 26(2) of the Act; a landlord must provide the tenant with receipts for any cash paid to him for rent or security deposits. The landlord has failed to do this. However, a tenant can not withhold rent for this reason.

**Rules about payment and non-payment of rent**

**26** *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

If the tenant is able to provide proof of her payments to the landlord for her security deposits then she must give the landlord a forwarding address in writing. If the tenant can provide proof of these transactions then the landlord must return the tenants' security deposits with 15 days of receiving her forwarding address in writing.

I find that there is no dispute of the fact that the tenant owes rent arrears of \$350.00 for April, 2009 and \$750.00 in rent that was due on May 01, 2009. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days. Therefore, the Ten-Day



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Notice still remained in effect. I find that the Notice for unpaid rent was supported under the *Act* and section 46 of the *Act* was fully met. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

I find that the tenant has succeeded in part and that she should recover the filing fee of \$50.00 from the landlord.

## Conclusion

I hereby issue an Order of Possession in favour of the landlord effective on June 01, 2009. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby issue the tenant with an Order to retain **\$300.00** from the rent she owes the landlord as compensation for loss of facilities and hardship due to the lack of repairs carried out to the rental unit. I also Order the tenant to further reduce the amount of money she owes to the landlord in rent by **\$50.00** for the cost of this application. The tenant is entitled to reduce the rent she owes to the landlord by **\$350.00**.

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: May 25, 2009.

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Dispute Resolution Officer