



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNDC, MNSD, CNR, RR, FF, O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The tenant has applied to cancel two notices to end tenancy and to reduce rent for repairs. The landlord has applied for an Order of Possession and a monetary order for unpaid rent and for compensation and damages.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and for landlord's use; to a monetary Order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a 2 Month Notice to End Tenancy for Landlord's Use, and a rent reduction due to non repair of a broken window; and recovery of the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 49, 67 and 72 of the *Act*.

### Background and Evidence

The tenancy began in September 2003 as a month to month tenancy for a current monthly rent of \$800.00 due on the 1<sup>st</sup> of the month. A security deposit of \$325.00 was paid on August 31, 2003.

The landlord has submitted the following documents into evidence:

- A summary statement;
- Copies of correspondence between the landlord and the tenant;
- A copy of a letter from the city to the landlord regarding the appearance of the yard, dated November 19, 2009; and
- 10 photographs of the yard.

The tenant has submitted the following into evidence:

- Copies of correspondence between the landlord and the tenant;
- Responses to the landlord's evidence;
- A copy of a letter from the city to the landlord regarding the appearance of the yard, dated November 19, 2009;
- A summary statement;
- A copy of a doctor's note confirming the female tenant's stay in hospital;
- A copy of previous Dispute Resolution decision regarding the tenant's successful application to cancel a previous Notice to End Tenancy for Cause;
- A written statement from the tenant's witness, dated November 14, 2009;
- 4 photographs of interior of rental unit;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2009 with an effective vacancy date of November 12, 2009, for unpaid rent of \$800.00 due on November 1, 2009; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 11, 2009 with an effective vacancy date of December 15, 2009 citing the landlord or the landlord's spouse, or close family member intend to occupy the rental unit.

The tenant provided testimony and documentary evidence that indicated that she had provided the landlord with a rent cheque and that the landlord claimed that he did not receive the cheque. The tenant further noted that she had told the landlord that she was willing to reissue the cheque if he requested, once he confirmed that he had not received it. She states the landlord did not request a replacement.

The landlord stated in the hearing that he had not received the rent cheque for the month of November, 2009. In his written evidence the landlord indicated that the tenant had assured him she would be replacing the missing cheque once she had put a stop payment on the original missing cheque.

The tenant had indicated in her testimony and evidence that she had requested the landlord repair a broken window that had been broken since July, 2009. Both parties provided their own versions of how the windows had been broken assigning responsibility to the other party. Neither party provided any evidence to corroborate their version of events.

The landlord testified that he intended to have his girlfriend and her daughter move into the house with himself and his two sons and they want to return the house into a single family property.

The tenants contend the landlord has issued the 2 Month Notice to End Tenancy for Landlord's Use of Property only because he had been unsuccessful in his previous attempted to end the tenancy for cause. The landlord confirms that while his intention is to return the rental unit into part of the main house for his own use, the fact that he lost the last Dispute Resolution decision contributed to that decision.

During the hearing the tenant acknowledged that it may be time to end the tenancy but they could not accomplish this within the notice period and they would require at least six months. The landlord indicated that he could offer until the end of January 2010 but no later than this date.

### Analysis

While Section 46 of the *Act* states a landlord may end a tenancy where a tenant has failed to pay the rent when it is due, I find that this particular instance was based on a failure to communicate between the parties as opposed to an intentional attempt to not pay rent. As such, I order the tenant to re-issue a rent payment for November, 2009 to the landlord.

In relation to the window, during the hearing I order the landlord to repair the window as soon as possible. When the hearing was held there was a cold spell in the outside temperature at the dispute address.

As to assign responsibility for the repairs, I find that based on the conflicting testimony without any evidence to support either claim, the landlord is responsible to pay for the repairs to the window, as per the Residential Tenancy Policy Guidelines. I further order monetary compensation to the tenants in the amount of \$100.00 for the 5 months they have lived without the window.

Section 49 (3) of the *Act* allows a landlord may end a tenancy if the landlord or a close family member of the landlord intend in good faith to occupy the rental unit. The landlord's stated purpose is to return the rental unit into the main part of the house thus showing intent for the landlord to occupy the rental unit.

The Residential Tenancy Policy Guidelines state that the "good faith" requirement imposes the following two part test:

1. The landlord must truly intent to use the premises for the stated purpose; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

I find the landlord has the intent to use the premises for the stated purpose and while the landlord admits the relationship with the long term tenants has contributed to his decision, I am not convinced that that is his primary motive. As such, I dismiss the tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Section 49 stipulates that a Notice served under this Section must be not be earlier than 2 months and must be on the day before the day in the month the rent is payable. I do note that the 2 Month Notice to End Tenancy stated an effective vacancy date of December 15, 2009 and as such I would normally amend the date to ensure compliance with Section 49 of the *Act*, however, the landlord agreed, in the hearing, to an effective vacancy date of January 31, 2010.

In compliance with Section 51, the landlord must provide to the tenant who has received a Notice to End Tenancy under Section 49 of the *Act* an amount that is equivalent of one month's rent payable under the tenancy agreement.

As the landlord was successful in his Application for Dispute Resolution, I find that he is entitled to recovery of the filing fee from the tenant. As the tenants were only partially successful in their Application for Dispute Resolution, I find that they are not entitled to recovery of the filing fee from the landlord.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **January 31, 2010**. 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 find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$700.00** comprised of \$800.00 rent owed and the \$50.00 fee paid by the Landlord for his application less the filing fee as ordered for a previous dispute resolution hearing and compensation to the tenant for the unrepaired window.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 14, 2009.

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Dispute Resolution Officer