



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

CNR and RR

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent and for authorization to reduce rent for repairs, services, or facilities agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions and to make relevant submissions to me.

### Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant should be entitled to reduce his rent as compensation for work he has done on the residential property.

### Background and Evidence

Counsel for the Landlord and the Tenant agree that this tenancy began on November 01, 2002; that the Tenant agreed to pay monthly rent of \$875.00 when he entered into this tenancy; and that rent was payable on the first day of each month.

In an affidavit dated September 24, 2009, the male Landlord declared that when the parties entered into this tenancy agreement there was an understanding that the Tenant would maintain the lawn and garden. He declared that the parties had an agreement that the Tenant would build a bedroom in the attic at his own expense. He declared that in July of 2003 the female Landlord and the Tenant mutually agreed to reduce the rent

by \$100.00 as compensation for materials related to the construction of the bedroom in the attic.

The Tenant stated that he did not agree to maintain the lawn and yard at the beginning of the tenancy and that his rent was reduced by \$100.00 in July of 2003 in recognition of the yard maintenance that he was completing.

Counsel for the Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid rent was personally served on the Tenant on October 26, 2009. The Notice declared that the Tenant owed \$5,922.00 in rent that was due on October 01, 2009. The parties agree that this Notice to End Tenancy replaced a flawed Notice to End Tenancy that was dated October 19, 2009.

Counsel for the Landlord and the Tenant agree that the Tenant paid \$800.00 in rent on January 28, 2009; \$400.00 in rent on February 27, 2009; \$600.00 in rent on March 30, 2009, and \$400.00 in rent on June 30, 2009. The parties agree that no rent has been paid since June 30, 2009. The Tenant stated that he has not been paying the rent since June 30, 2009 as the Landlord owes him money from work that he has done on the property.

The Tenant contends that he entered into several verbal agreements for a variety of work that he performed on the residential property. In his letter dated October 05, 2009 the Tenant declared that he was interested in purchasing this residential property and that he had an understanding with the Landlord that the purchase price would reflect the labour and materials he was expending on the property.

Counsel for the Landlord stated that the Landlord did not enter into an agreement to compensate the Tenant for any labour performed on the rental unit, apart from the rent reduction that was agreed upon in July of 2003. He stated that the Landlord did not ask the Tenant to make the improvements and that the Tenant made the improvements for his own benefit.

The Tenant argued that it is only reasonable to assume that the Landlord had agreed to compensate him for the improvements he was making to the property, as no reasonable person would make such improvements at his own expense.

Counsel for the Landlord requested an Order of Possession at the hearing. He stated that the Landlord would be willing to allow the Tenant to occupy the rental unit until December 31, 2009 providing the Tenant paid rent for December, in the amount of \$775.00, by December 21, 2009. The Tenant declared that he would pay \$775.00 directly to Counsel for the Landlord on, or before, December 21, 2009.

### Analysis

The undisputed evidence is that the Landlord entered into a written tenancy agreement which required the Tenant to pay monthly rent of \$875.00, which was subsequently reduced to \$775.00 by mutual consent of the parties.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Without determining precisely how much rent is due to the Landlord, I find that the Tenant has not paid a significant amount of rent that was due on October 01, 2009.

In the circumstances before me, there is no evidence to indicate that the Tenant has the right to deduct any portion of the rent. In reaching this conclusion I was strongly influenced by the absence of documentary evidence that corroborates the Tenant's statement that the Landlord authorized him to reduce his rent in exchange for improving the residential property. In circumstances where two parties do not agree on the terms of an alleged mutual agreement, the burden of proving a term of a mutual agreement rests with the person who is attempting to enforce that term. In these circumstances the burden of proving that the Landlord agreed to authorize him to reduce his rent in exchange for improving the residential property rests with the Tenant, and I find that he has failed to establish that the parties entered into an agreement of this nature.

Although I accept that the Tenant made improvements to the residential property, I find that he has failed to establish that the Landlord agreed to compensate him for improving the residential complex. Based on the letter written by the Tenant, dated October 05, 2009, I find it reasonable to conclude that the Tenant improved the residential property because he hoped to purchase the property and not because he had been asked to do so by the Landlord. On this basis, I dismiss the Tenant's application for a rent reduction in compensation for improvements made to the property.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due. As I have found that the Tenant failed to pay rent, I find that the Landlord had grounds to end this tenancy pursuant to section 46 of the *Act*. I find that the Tenant was served with a valid Ten Day Notice to End Tenancy for Unpaid Rent in accordance with section 46 of the *Act* on October 26, 2009. On this basis, I find that the Landlord is entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*.

### Conclusion

I hereby dismiss the Tenant's application to set aside the Notice to End Tenancy, and I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. I hereby Order that the Order of Possession can be served on, or after, December 22, 2009 if Counsel for the Landlord has not received a payment from

the Tenant, in the amount of \$775.00, by December 21, 2009. I further Order that the Order of Possession cannot be served until December 29, 2009 if Counsel for the Landlord received a payment from the Tenant, in the amount of \$775.00, by December 21, 2009.

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 09, 2009.

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Dispute Resolution Officer