



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNR, DRI, ERP, RR, FF

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to dispute an additional rent increase, requesting an Order that the landlord comply with the Act by completing repairs and emergency repairs and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matter

At the start of the hearing the tenant's Application was amended to include a request to cancel a 10 Day Notice for unpaid rent issued on May 1, 2010.

The landlord entered the hearing at 10:32 a.m. His telephone was experiencing problems, causing static. The landlord hung up and called back into the hearing at 10:41 a.m., at which point the static again commenced. The landlord immediately exited the hearing and did not return. The landlord's site manager confirmed that he could act as the landlord's representative.

### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on May 1, 2010 be cancelled?

Has the landlord given the tenant an illegal rent increase and is the tenant entitled to compensation for overpaid rent?

Must the landlord be Ordered to complete repairs to the rental unit?

Is the tenant entitled to filing fee costs?

### Background and Evidence

The tenancy commenced in 1998, rent at the start of 2010, was \$617.75 per month, due on the first day of the month.

The landlord confirmed that the Notice ending tenancy issued on May 1, 2010, is of no force as the tenant paid her rent owed on May 2, 2010.

The tenant submitted a copy of a Notice of Rent Increase as evidence, this document was not served to the landlord, but the tenant was provided with her copy by the landlord. The landlord confirmed that the Notice imposed a rent increase in the sum of \$57.25 effective May 1, 2010. The tenant provided copies of rent cheques which indicate she has paid this increase for May and June, 2010.

The tenant submitted copies of photographs and a CD that showed repairs that need to be completed in the rental unit. The landlord received copies of this evidence. The tenant submitted a copy of a rent payment cheque for April 1, 2009 rent which included a notation that repairs were required to the bathroom.

During the hearing the landlord and tenant reached an agreement that by Tuesday, June 22, 2010, the following repairs will be made to the rental unit:

- The malfunctioning toilet will be repaired so that it flushes properly and no longer leaks;
- The bathroom sink faucet will be repaired so that it no longer leaks;
- The bathtub faucet will be repaired so that it no longer leaks;
- The stove will be fitted with properly functioning knobs and handles;
- The broken tile in the front of the kitchen sink will be repaired so that the surface is washable and easily cleaned;
- The ceiling in the living room will be inspected for moisture and possible leaks and properly prepared and painted so that the stain is covered.

The tenant reported a number of these matters to the landlord in October and November of 2008. The tenant is having to turn the bathroom water main off, in order to stop the constant flow of water from the taps. The landlord acknowledged he had been aware of

the matters and could not recall being informed of some of the items. The landlord finds the presence of the tenant's dog threatening and would like the tenant to allow repair people into her unit without videotaping them or taking photographs. The tenant agreed she would not take pictures or videotape the workers and that her dog will be out of the home or contained in another room.

The parties agreed that entry to the rental unit will be arranged by mutual agreement, or by 24 hour written notice as provided by section 29 of the Act.

### Analysis

In relation to the Notice ending tenancy for unpaid rent issued on May 1, 2010; the landlord acknowledged rent was paid in full on May 2, 2010. Further, as the Notice was issued on the day rent was due; I find that the Notice was invalid.

I find that the rent increase imposed effective May 1, 2010, fails to comply with section 43 of the Act. The allowable increase, as provide by Residential Tenancy Regulation, section 22, is 3.2% in 2010. Therefore, the rent increase provided to the tenant dated December 31, 2009 provided an increase that exceeds the maximum allowable of \$19.77. Therefore, as the tenant paid May and June rent at the increased rent of \$675.00, I find that the tenant is entitled to rent abatement in the sum of \$74.96. This may be deducted from the next months owed. Rent, effective July 1, 2010, will revert to \$617.75.

The landlord is at liberty to issue a Notice of Rent Increase in the approved form and amount of 3.2% for 2010. A Notice issued and served today before July 1, 2010, would be effective October 1, 2010.

The parties have agreed that the landlord will be given access to the rental unit, with the dog absent, in order to complete the repairs. The tenant has agreed not to photograph or videotape the workers. The landlord has agreed to make all repairs and have them completed by June 22, 2010, at 5 p.m.

If the repairs are not completed by June 22, 2010, the tenant is at liberty to submit Application requesting rent abatement until such time as the repairs are made.

I find that the tenant is not responsible for any damage that may have occurred to the floor or walls of the bathroom, as the result of the leaking toilet, as the landlord confirmed he was aware of the need for this repair some time ago.

The parties were reminded of their obligations under section 32 of the Act, which provides, in part:

**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.*

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

As the tenant's Application has merit I find that the tenant is entitled to filing fee costs which she may deduct from the next months; rent owed.

Therefore, the total rent abatement that may be deducted from the next month's rent owed is \$124.96.

### Conclusion

The Notice ending tenancy issued on May 1, 2010, is of no force or effect.

The rent increase dated December 31, 2009, imposed a rent increase in breach of the Act; and is of no force or effect.

The tenant is entitled to rent abatement in the sum of \$74.96 for rent overpayment made in May and June, 2010, and will deduct this amount from the next month's rent owed.

All repairs required that were raised in this Application will be completed, by mutual agreement, no later than June 22, 2010, at 5 p.m. If the repairs are not completed the tenant is at liberty to submit an Application requesting rent abatement until such time as the repairs are completed.

The tenant is entitled to filing costs and will deduct \$50.00 from the next month's rent due.

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: June 14, 2010.

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Dispute Resolution Officer