



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

For the tenant – MT, CNR, MNR, MNDC, ERP, RP

For the landlord – OPR, OPC, OPB, ET, MNR, FF, O

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks more time to file his application and request that the 10 Day Notice to End Tenancy is cancelled. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the landlord to make emergency repairs for health or safety reasons and an Order for the landlord to make repairs to the unit, site or property. The tenant withdrew his application for a Monetary Order for the cost of emergency repairs.

The landlord seeks an Order of Possession for unpaid rent. At the outset of the hearing the landlords' agent withdrew his application for an Order of possession for cause and because the tenant has breached an agreement with the landlord. The landlord also withdrew his application for an early end to the tenancy. The landlord seeks a Monetary Order for unpaid rent and seeks to recover his filing fee paid for this application.

Both parties served the other with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

## Issues(s) to be Decided

- Is the tenant entitled to more time to cancel the Notice to End Tenancy?
- If so is the tenant entitled to cancel the Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss to his belongings?
- Is the tenant entitled to an Order for the landlord to carry out emergency repairs?
- Is the tenant entitled to an Order for the landlord to carry out repairs?
  
- Is the landlord entitled to an Order of Possession based on the 10 Day Notice to End Tenancy?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

## Background and Evidence

Both parties agree that this tenancy started on December 01, 2009, this is a fixed term tenancy which is due to expire on December 01, 2010. Rent for this unit is \$650.00 per month and is due on the first of each month. The tenant paid a security deposit of \$325.00 on November 26, 2009. The landlord did not carry out a move in condition inspection at the start of the tenancy.

## The landlords' application

The landlords' agent testifies that the tenant did not pay rent for May and June, 2010 of \$1,300.00. The landlords' agent states he issued a 10 Day Notice to End the Tenancy for unpaid rent on June 01, 2010. This was posted to the tenants' door on June 02, 2010 and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 11, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for July and August, 2010 to the amount of \$1,300.00. The landlords' agent has requested to amend his application to recover the unpaid rent for these

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months also. The total amount of unpaid rent is now \$2,600.00. The landlord seeks an Order of Possession and a Monetary Order to recover the unpaid rent and filing fee.

The tenant does not dispute that he owes rent to the landlord. The tenant claims he is waiting for some payments from the government to cover the outstanding rent. He also claims he was advised by the service centre when he filed his application not to pay any more rent till after the dispute is resolved.

### The tenants' application

The tenant seeks more time to cancel the notice and testifies that he had to attend court during the time the 10 Day Notice was issued to fight for custody of his children. The tenant states he was in court on May 04, May 10, June 16, June 22 and June 24, 2010. The tenant states he was left feeling overwhelmed and incapable which resulted in him filing his application late. The tenant seeks to cancel the 10 Day Notice to End Tenancy which he claims he did not receive until June 10, 2010.

The tenant testifies when he moved into the unit the basement window was covered with a wardrobe door and was broken. This left the unit unsecure. He claims the landlord was aware of this before the tenancy started but failed to repair the window within the promised two week time frame despite reminders from the tenant.

The tenant testifies that there was a flood in the basement from a leak outside the unit which drained into the basement. The tenant testifies that a queen size box frame bed and mattress and clothing in this area were ruined by the flood and seeks compensation from the landlord to replace these items at a sum of \$1,600.00.

The tenant claims the landlord was notified about a leak in the upstairs bathroom. The landlord sent workers to repair this problem but they did not finish the job properly and water leaked through the ceiling when he had a shower. The tenant testifies that this leak caused damage to his surround system and he seeks compensation to replace this to the sum of \$500.00.

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The tenant testifies that the landlord was notified of an electrical problem with a socket where the dryer was plugged in. The landlord sent round an electrician who told him the socket was wreaked and not to use it. However, the socket had already sent a bolt of electricity through the dryer, which the tenant had purchased from his mother, and this caused damage to the dryer to the extent it could not be used. The tenant seeks compensation for the cost of the dryer of \$150.00. The tenant states he could not afford to pay for tenants insurance on his belongings as requested by the landlord.

The tenant seeks an Order for the landlord to carry out both emergency repairs and repairs to the property. The tenant states he has informed the landlord of the repairs but the landlord has not always acted on this information and made the repairs in a timely manner.

The tenant withdraws his application to recover back rent to the sum of \$3,250.00.

The landlords' agent testifies that he did make a mistake on the date on the 10 Day Notice however whether it was served to the tenant on June 02 or June 10, 2010 the tenant would still be out of time for filing his application to cancel the Notice within the 10 days allowed.

The landlords' agent points out section 29 of the tenancy agreement which states the tenant must carry sufficient insurance to cover his property against loss or damage from any cause and agrees that the landlord will not be held responsible for any loss or damage to the tenants' property. The landlords' agent states that the tenant was informed of this responsibility again after the first leak occurred in the bathroom.

The landlords' agent states the tenant did inform him of the broken window but when he went to see it he found the tenant had other people living in the unit who were aggressive towards him and he refused to attend the unit alone because of this. He also argues that the basement window was boarded up and not left open as the tenant suggests.

The landlords' agent testifies that the tenant did not inform him of the second leak in the bathroom and he was under the impression that the repair had been made. He argues that he cannot make repairs if he is not informed of them. The landlords' agent states the tenant did

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inform them of the flood in the basement and this was dealt with. The landlords' agent states this flood was out of their control. The landlords' agent also argues that he sent an electrician to the unit when the tenant informed him that there was a problem with the power.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that the landlord has established his claim for unpaid rent for May and June, 2010 and I have allowed the landlords' amended claim for July and August, 2010 as the tenant continues to reside at the rental unit and would be aware that rent was due for these months. Therefore, I find the landlord is entitled to a monetary award to the sum of **\$2,600.00** pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord has been issued with a Monetary Order for the following amount:

Outstanding rent for May, June, July, August, 2010	\$2,600.00
<b>Total amount due to the landlord</b>	<b>\$2,650.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, and despite the difference in testimony as to the exact day the Notice was served to the tenant, I find the tenant still did not file his application until well after the allowable five days.

While I sympathize with the tenants family difficulties I find he has not provided me with sufficient evidence that he had extraordinary circumstances that prevented him from filing his application in time pursuant to section 66 of the *Act* or that he could have appointed someone else to act on his behalf. Even if the tenant had filed his application on time the result would be the same as rent was unpaid for the months claimed by the landlord and was not paid within the five days allowed on the 10 Day Notice. Consequently, I find that the tenant is conclusively

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presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

With regards to the remainder of the tenants claim for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has meet the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has provided insufficient evidence to show that the landlord was negligent or that any damage was caused by any willful action on the part of the landlord. The landlord could not foresee that this flood would occur in the basement or the problems with the electrical socket. I also find the landlord did repair the leak in the bathroom and was not informed by the tenant that the repair had not been completed satisfactorily. I further find that the tenant was aware that he must hold tenants insurance to cover his loss if any damage did occur and he neglected to do so. Consequently, the tenants claim for money owed or compensation for damage or loss is dismissed.



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With regard to the tenants claim to seek orders for the landlord to make emergency repairs and other repairs; as the tenancy will end I will not be issuing any orders in connection with this section of the tenants claim as they would not be enforceable after the tenancy ends and the tenant has not provided sufficient evidence that the orders would be required. Consequently this section of the tenants claim is also dismissed.

## Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,650.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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: August 25, 2010.

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Dispute Resolution Officer