



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, RP, RR, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 18, 2010, for an Order that the Landlord make repairs, for an Order permitting the Tenant to deduct the cost of repairs from her rent and to recover the filing fee for this proceeding.

At the beginning of the hearing the Parties confirmed that the 10 Day Notice was cancelled when the Tenant paid the outstanding rent within 5 days of being served with the 10 Day Notice.

### Issues(s) to be Decided

1. Are repairs necessary?
2. Is the Tenant entitled to a rent reduction?

### Background and Evidence

This tenancy started on December 15, 2009. Rent is \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Parties agree that for the months of January and February 2010, the Tenant's paid a reduced rent of \$750.00 per month to compensate her for anticipated cosmetic repairs such as painting and replacing baseboards. The Tenant claimed she was unable to make these repairs because the bathtub was leaking through the floor into the garage area of the rental property and contributing to high humidity in the rental unit.

The Tenant said that water also began to leak into the living room of the rental unit from the patio and as a result the Landlord provided her with a dehumidifier to try to address the increased humidity from this source as well. The Tenant said the dehumidifier had to run constantly and as a result, her rent was reduced to \$1,100.00 for the month of March 2010 and \$1,000.00 for the month of April 2010 to compensate her for her increased hydro expenses and (in the case of April also) for the loss of use of the patio area which had been pulled apart in mid-March.

The Tenant said she also paid a reduced rent of \$950.00 for May, June and July 2010 due to her increased hydro expenses and the loss of use of the patio. The Tenant claimed that the rental unit was uninhabitable and that as a result, she lived with her

Residential Tenancy Branch  
Ministry of Housing and Social Development

mother from the beginning of May until July 11, 2010. The Tenant admitted that she and the Landlord agreed that she would hire a friend of hers to make repairs to the patio and bathroom of the rental unit and that to compensate him, the Tenant made 2 payments of \$950.00 to her friend in lieu of paying rent for April and May 2010 as well as \$450.00 from her July 2010 rent.

The Tenant claimed that although the patio and leak under the bathtub have been repaired, other repairs to the bathroom are still outstanding. In particular, the Tenant said that a plumber recently inspected the shower area behind some tiles and advised her that there was black mould. The Landlord denied that there was mould behind the shower surround and claimed that it was only wet with a small amount of mould in the grout around the tiles. The Tenant also claimed that the bathtub finish was gone and that the bathtub needed to be replaced which the Landlord denied. The Tenant further claimed that the baseboards need to be replaced.

The Landlord argued that the timing of the repairs has been dependent on the availability of the Tenant's friend who has access to the rental unit at all times. The Tenant admitted that her friend has a key and does the repairs in between jobs. The Tenant claimed however, that the bathroom repairs could not be completed until the issue of moisture coming from the patio area was resolved which the Landlord denied.

## Analysis

At the hearing the Tenant said she was seeking compensation for her loss of use of the rental unit for the months during which she claimed it was uninhabitable. However, the Tenant did not apply for compensation on her application and the Landlord objected to allowing the Tenant's request to amend her application at the hearing. Consequently the Tenant will have to make a separate application if she wishes to pursue her claim for further compensation for her loss of use of the rental unit.

The photographs provided by the Tenant of the bathroom area show only a few loose tiles in the shower area with what appears to be mildew or mould in the grout. The Tenant did not provide a photograph of the bathtub. Given the contradictory evidence of the Parties and in the absence of any reliable, corroborating evidence from the Tenant, I find that there is insufficient evidence to conclude that the shower surround area in the bathroom needs to be replaced in its entirety due to pervasive mould. Should the Tenant obtain evidence that this area is full of mould as she claimed, then she may re-apply for a repair order.

The Tenant sought a rent reduction of \$950.00 per month until such time as the bathroom repairs are concluded. The Landlord said he is not willing to entertain any further rent reduction after July 2010 because the bathroom only needs a few tiles

Residential Tenancy Branch  
Ministry of Housing and Social Development

replaced in the shower area. The Tenant said she believed that she could lose the use of the bathroom if there is mould inside the walls as she alleged. As there is insufficient evidence about the extent of repairs required to be made to the shower area of the bathroom, the Tenant's application for a rent reduction is also dismissed with leave to re-apply should prolonged or extensive repairs to the bathroom be necessary. Consequently, the Tenant's rent will be \$1,200.00 effective August 1, 2010 until further order of the director or written agreement of the Parties.

The Landlord requested and ***I order pursuant to s. 62(3) of the Act that the Tenant provide the Landlord with receipts from her friend for payments she made to him in lieu of rent for the months of April, May and July 2010 for the purpose of making repairs to the rental unit.***

## Conclusion

The Tenant's application to cancel a 10 Day Notice to End Tenancy dated June 18, 2010 is granted. The Tenant's applications for an Order that the Landlord make repairs and for a rent reduction are dismissed with leave to reapply. As the Tenant has been unsuccessful in this matter, I find that it is not an appropriate case to award her reimbursement of the filing fee from the Landlord and that part of her claim is dismissed without leave to reapply.

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 09, 2010.

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Dispute Resolution Officer