



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, ERP, MNDC

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking to cancel a 10 day Notice to End Tenancy for unpaid rent, for monetary compensation under the Act or tenancy agreement, and an order for the Landlord to make emergency repairs to the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Background, Evidence and Resolution

On April 2, 2010, a large tree fell from a neighbour's property and damaged the roof and corner of the rental unit. Fortunately, no one was in the rental unit at the time the tree fell. The tree damaged the rental unit such that one of the bedrooms could not be occupied. The rental unit consists of three bedrooms, a bathroom, living room and kitchen, as well as a second bathroom, mud room and recreation room. The current monthly rent is \$880.00 for the rental unit.

The Tenants had paid the April 2010 rent, although they were unable to use the rental unit for most of April, due to uncertainty that the structure was safe to occupy. However, the building was apparently inspected and the Tenants returned to the rental unit in late April.

The Landlord allowed the Tenants to not pay any rent for May of 2010. The Tenants then did not pay rent for June, and the Agent for the Landlord phoned the Tenants and requested the June rent. The Tenants were seeking a 50% reduction in rent until the

rental unit is completely repaired and the Landlord was initially offering a \$100.00 a month reduction (approximately 11½%), which was then increased to an offer of 25%.

Nevertheless, the parties could not agree on a rental reduction, and the Landlord issued the Tenants a 10 day Notice to End Tenancy for unpaid June rent. The parties also agree there has been no rent paid for July and August of 2010.

During the course of the hearing the parties did come to a resolution to resolve these issues, which are described below. Prior to explaining the resolution, I would like to point out to both parties some of the key sections of the Act, which were discussed during the hearing.

The Tenants are not allowed to withhold rent, unless they have an order from a Dispute Resolution Officer or other authority under the Act, such as the cost of them paying for emergency repairs themselves. The Tenants had no such order or authority under the Act to withhold rent. Therefore, in these circumstances, the Landlord would have been entitled to an order of possession for unpaid rent, but for the agreement reached. The Tenants were also informed that the Landlord is not their insurer and they would have benefitted here by having renters insurance.

While the Landlord was not negligent here, as the tree fell from a neighbour's property, I also point out to the Landlord that these repairs are well into the fifth month. The Landlord must take steps to ensure the repairs are being performed as quickly as possible.

As to the agreement to resolve this matter, the parties agreed as follows:

1. The rent paid in April was compensated back to the Tenants by having the rent free in May;
2. The Tenants will be credited with \$218.79 for the costs of heat etc., lost during the month of April;
3. The rent will be reduced by 30% for the months of June, July and August, and will continue on until the repairs to the rental unit are completed;
4. The Tenants will pay the Landlord the sum of **\$1,629.21** on August 18, 2010, in compensation for the reduced June, July and August rent (which is arrived at by subtracting 30% from the \$2,640.00 [the usual amount of rent], to get the reduced rent of \$1,848.00 and then subtracting the credit to the Tenants of \$218.79 as described above);
5. The June 18, 2010, 10 day Notice to End Tenancy is set aside;

6. From September 1, 2010, until the repairs are completed, the reduced rate of rent shall be \$616.00;
7. From September 1, 2010, until the repairs are completed, the Landlord shall compensate the Tenants for 50% of the electrical costs at the rental unit, to compensate them for heating the rental unit until repaired;
8. As soon as possible following the completion of the repairs, the Landlord shall have a professional pest abatement company inspect the property and provide treatments, if required.

The parties are commended for reaching an agreement to the dispute.

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 17, 2010.

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Dispute Resolution Officer