



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development



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## DECISION

### Dispute Codes:

*OPR, MNR, CNR, RR, FF.*

### Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, damages and other expenses incurred, pursuant to Section 67;

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent
- An order to compensate the tenant for loss of value to the unit and repairs

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

### Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession and monetary order for unpaid

rent? In order to answer this question it must be determined:

- Was a valid 10-Day notice to End Tenancy properly served on the tenant?
- Was there outstanding rent owed to the landlord by the tenant at the time the Ten-Day Notice to End Tenancy was issued and served?
- Did the tenant fail to pay the rental arrears within 5 days of receiving the Notice to End Tenancy?
- Is the landlord entitled to additional compensation for damages and costs?

**Issues to be decided: Tenant's Application**

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?
- Has the tenant proven entitlement to be compensated through a rent reduction for the damage and losses for which the landlord is responsible under the Act?

**Background and Evidence**

Based on the testimony of both parties, the background is as follows. The joint tenancy started in November, 2009 and there was no written agreement. The rent was set at \$750.00 and the tenant had paid a security deposit of \$375.00. The parties all agreed that the tenant did not pay the \$750.00 rent for August 2010 or for September rent. One of the co-tenants had already moved out.

The tenant testified that the rent payment was withheld due to serious problems in the unit that had been plaguing the occupants from the start of the tenancy. These included a leaking roof, deficiencies in the heat and hot water and a malfunctioning refrigerator. The tenant testified that verbal complaints were made but were ignored by the landlord. The tenant felt that this justified the action of withholding rent and took the position that the 10-Day Notice should be cancelled on that basis.

The tenant was also claiming a rent abatement due to the impact of the above problems on the value of the tenancy. The tenant felt that the rent should be reduced by \$200.00 per month for the duration of the tenancy. This represented a reduction of approximately 26.1% and amounted to \$1,800.00 of the total amount of rent already paid between November 2009 to July 2010 inclusive and would also reduce the debt owed for unpaid rent for August and September 2010, by \$400.00 for a total abatement of \$2,200.00

Because the tenant withheld rent due on August 1, 2010, on August 4, 2010 the landlord issued a Ten-Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act effective August 14, 2010 claiming rental arrears of \$750.00.

The landlord also applied for a monetary claim for additional compensation for damages. The landlord described these damages as being \$1,260.00 costs for fumigation due to bedbugs that were allegedly brought onto the premises by the tenant and a broken window costing an estimated \$100.00. The total claim was for \$2,485.00.

In regards to the tenant's claims for a rent abatement for persistent roof leaks, problems with the heat, no hot water in the kitchen and issues with the refrigerator, the landlord acknowledged that these problems did exist, although not to the extent being claimed by the tenant. The landlord felt that a rent abatement beyond \$100.00 per month would not be warranted.

#### Analysis: End of Tenancy

The landlord was seeking an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated August 4, 2010. The tenant's application was requesting that the notice be cancelled as the rent was not paid due to deficiencies and repairs unaddressed by the landlord.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the

tenancy agreement. I find that the tenant did not pay the rent when rent was due. Withholding rent for repairs is not permitted under the Act except in the circumstances prescribed in section 33 of the Act which deals with situations involving emergency repairs which are:

- Urgent and necessary for the health or safety of anyone or for the preservation or use of residential property and
- The landlord failed to take care of the problem and
- The tenant paid for the emergency repairs out of the tenant's own pocket after making at least 2 attempts to contact the landlord and given the landlord reasonable time to make the repairs and
- The tenant has provided the landlord with the receipts and
- The landlord has refused to reimburse the tenant

Only if all of the above conditions are met and if the landlord still refuses to reimburse a tenant would the tenant be justified in deducting the amount spent on emergency repairs from the rent.

In this instance, I find that the tenant did not meet the conditions under section 33 to allow the rent to be withheld. The tenant did not pay for any repairs. With repair problems such as those described, the tenant had a right under the Act to make an application for an order to force the landlord to do the repairs or a rent reduction.

I find that the Ten-Day Notice received by the tenant on August 4, 2010 did include specific instructions warning the tenant that a tenant is not entitled to withhold rent. I find there is no provision under the Act that would allow a tenant to withhold rent under the circumstances applicable to this situation.

Based on the testimony and evidence of both parties, I find that the tenant was served with a valid Notice to End Tenancy for Unpaid Rent and the tenant had 5 days to pay the rent owed to cancel the Notice and failed to do so. Therefore the portion of the tenant's application relating to the request for an order to cancel the Ten-Day Notice is hereby dismissed without leave to reapply. Accordingly I find that the landlord is entitled

to an Order of Possession under the Act.

### **Analysis – Landlord’s Monetary Claim**

In addition to obtaining an Order of Possession, the application from the landlord also included a monetary claim for rent owed for August 2010 in the amount of \$750.00.

Given the findings above, I find that the landlord is owed unpaid rent for August and September under the tenancy agreement for a total of \$1,500.00

In regards to the landlord’s claim for damages for the \$1,260.00 cost of the fumigation, I find that under the Act pest control is normally the responsibility of the landlord to arrange and pay for. This is not an issue of blame. However, the tenant is expected to cooperate. Accordingly, I find that the landlord’s monetary claim for the cost of removing the bedbugs must be dismissed.

In regards to the claimed damage to the window, the tenant had agreed to have \$100.00 deducted from the security deposit for the repair.

Based on the evidence, I find the landlord is entitled to \$1,600.00 in compensation for rent and damages.

### **Tenant’s Application Monetary Claim - Analysis**

The tenant has claimed compensation in the form of a retro-active rent abatement for devalued tenancy due to the landlord’s failure to comply with the Act. In regards to an applicant’s right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount or order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

Proof that the damage or loss exists,

Proof that this damage or 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 section 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 that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. The tenant has claimed that the tenancy was devalued by persistent roof leaks, problems with the heat, hot water and refrigeration and the landlord did not dispute that these problems were reported to the landlord.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. 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.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. In some cases a landlord may terminate or restrict a service or facility, as long as it is not essential to the tenant's use of the rental unit as living accommodation or considered to be a material term of the tenancy. However, the landlord is required to

give 30 days' written notice, in the approved form, of the termination or restriction, and must also reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. That being said, in this instance I find that the deficient services, including heat, hot water and refrigeration were considered to be essential services and as such could never be legally compromised nor removed.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference. I find that having to repeatedly report, avoid, or attend to, the various condition problems with the building functioned to interfere with the quiet enjoyment of the suite to the extent that it had a detrimental impact on the tenant's quality of life and reduced the value of the tenancy.

Given the above, I find that the tenant has met elements 1, 2 and 3 of the test for damages to justify compensation. I find that in order to fully meet element 4 of the test for damages, the tenant should have taken action sooner to force compliance by the landlord instead of waiting and finally jeopardizing the tenancy by withholding rent. However, it is clear that the landlord did not meet its obligations under several sections of the Act and there is no doubt that this tenancy was devalued as a result.

Given the above and based on the evidence and testimony, I find that the tenant is entitled to a retroactive rent reduction of \$200.00 per month from November 2009 until and including September 2010, a period of eleven months and that the monthly rent is set at \$550.00 per month for the entire period in question.

## **Conclusion**

Pursuant to section 55(2), I hereby issue an Order of Possession in favour of the Landlord effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established total monetary entitlement of \$1,600.00 comprised of \$750.00 rent claimed for August, \$750.00 rent for September and \$100.00 compensation for the broken window. I find that the tenant has established entitlement for \$2,625.00 comprised of \$200.00 rent abatement for each of the eleven months including November and December 2009, January, February, March, April, May, June, July, August and September 2010, \$375.00 security deposit and \$50 for the cost of filing the application.

After deducting the \$1,600.00 compensation to the landlord, I find that the tenant is entitled to be paid the balance of \$1,025.00 and I hereby issue a monetary order under section 67 of the *Act* in favour of the tenant for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenant's application and the landlord's application are hereby 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: September 2010.

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Dispute Resolution Officer