



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      ERP, MNDC, MNR, MNSD, OPR, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a rent reduction of \$650.00 a month for seven months, a request for a repair order and a request that the respondent bear the \$50.00 cost of the filing fee that she paid for her application for dispute resolution.

The landlord's application is a request for an Order of Possession based on Notice to End Tenancy for non-payment of rent, and a request for a monetary order for \$6,599.00. Landlord is also requesting that the respondent bear the \$100.00 cost of the filing fee that she paid for her application for dispute resolution.

## Background and Evidence

On July 13, 2010 the landlord served the tenant with a 10 day Notice to End Tenancy for non-payment of rent which stated that \$2400.00 in rent was outstanding.

The landlord testified that:

- The tenant has been refusing to pay the full rent, and as a result she served her with a Notice to End Tenancy on July 13, 2010.
- The tenant owes \$650.00 for the month of May 2010, \$650.00 for the month of June 2010, \$1750.00 for the month of August 2010, and \$1750.00 for the month of September 2010.
- The tenant claims that I agreed to reduced the rent by \$650.00 per month, however I never agreed to such an arrangement, the tenant took it upon herself to reduced the rent, claiming that rent should be reduced until requested repairs were done.
- I have always been willing to do the requested repairs, however the tenant's difficult schedule has made it virtually impossible to do the repairs as soon as she wanted.
- She had requested a furnace repair, and it turned out that that was simply in need for a replacement furnace filter.
- Repair to the garage door has not been completed, however it's ready to be completed whenever the tenant is available to allow access to the repairman.

The landlord is therefore requesting an Order of Possession, and requesting a monetary order as follows:

Outstanding May 2010 rent	\$650.00
Outstanding August 2010 rent	\$1750.00
Outstanding September 2010 rent	\$1750.00

October 2010 rent	\$1750.00
Bank fees \$7.00 X 7	\$49.00
Filing fee	\$100.00
Total	\$6699.00

The tenant testified that:

- The landlord has failed to do requested repairs.
- The furnace in the rental unit is still not working properly, and until today she was never told that it needed a new filter.
- The garage door repair has not yet been done.
- She has never denied access to any repairman or been uncooperative, however she does travel for large periods of time due to her work and she does not feel comfortable giving out of key to someone she does not know or allowing them access while she is not present.
- The landlord had agreed to reduce the rent by \$650.00 per month until the repairs were completed.

The tenant is therefore requesting a rent production of \$650.00 per month for the past seven months during which time the repairs were not done.

## Analysis

On July 13, 2010 the landlord served the tenant with a 10 day Notice to End Tenancy for non-payment of rent, and to date the tenant has filed no dispute of that notice and has not paid the outstanding amount on that notice.

Section 46(4) & 46(5) of the residential tenancy act states:

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is **conclusively** presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore since the tenant has not paid the rent, and has not filed a dispute of the notice, the tenant is conclusively presumed to have accepted that the tenancy ends and therefore I will be issuing an Order of Possession to the landlord.

I will also allow a portion of the landlord's monetary claim, because it is my finding that the tenant has not met the burden of proving her claim that the landlord agreed to reduced the rent nor has she established her claim for rent reduction.

It is my decision that I will not allow the rent reduction requested by the tenant, because I am not convinced that the tenant has supplied sufficient access to the landlord to facilitate the repair within a reasonable timeframe.

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The tenant in her own testimony stated that she is away from the rental unit for long periods of time and does not want people entering when she is not there. It is not unreasonable for a tenant to want to be present when the repairman is in her home however it is not reasonable to expect the landlord to reduce the rent when the tenant is unavailable to have the repairs done due to work travel.

Therefore I will not be issuing a monetary order in favour of the tenant, and since this tenancy is ending I will also not be issuing any repair orders.

The portion of the landlord's monetary claim that I will allow is as follows:

Rent outstanding for May 2010	\$650.00
Rent outstanding for August 2010	\$1750.00
Rent outstanding for September 2010	\$1750.00
Bank charge \$7.00 X 1	\$7.00
One half of filing fee	\$50.00
Total	\$4857.00

I have denied the claim for October 2010 rent, because that rent is not yet outstanding and this tenancy is ending.

I have only allowed the claim for one Bank charge, because the landlord has only supplied evidence of having paid one Bank charge.

I will only allow half the filing fee, because the total amount allowed on this application is less than the amount at which the fee rises from \$50.00 to \$100.00.



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## Conclusion

### Tenant's application

The tenant's application is dismissed in full without leave to reapply.

### Landlord's application

I have issued an Order of Possession for 1 p.m. on September 15, 2010, and I have issued a monetary order for \$4857.00.

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 03, 2010.

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Dispute Resolution Officer