



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNSD, MNDC, FF, CNC, ERP, RP, PSF, RR.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation for the poor condition of the rental unit. . The tenant also applied for an order to direct the landlord to make repairs and lower the rent. Both parties applied for the recovery of the filing fee.

The hearing was attended by both parties and they were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to reduced rent and for compensation for the poor condition of the rental unit?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on June 01, 2010. The rent is \$800.00 per month due on the last day of each month. The tenant paid a security deposit of \$400.00. The building houses six units.

The tenant stated that prior to moving in; he gave the resident manager a list of repairs that were required in the rental unit. These were minor repairs and included repair to the main door frame, balcony door and to replace the covers of an electric outlet and the thermostat.

The list also included complaints of nails and screws in the walls, coloured paint on the cabinets and patches on the roof from previous leaks. The tenant stated that these repairs were still pending at the time of the hearing.

The landlord stated that the tenant was informed that the roof would be replaced in August. The work started on August 10. Sometime later, there was a heavy down pour and water leaked into the rental unit. The tenant informed the landlord on August 22 about the leak. The landlord stated that the resident manager and maintenance staff were refused entry into the suite to assess the damage. After the roof was installed, the landlord started the repair of the patches on the ceiling and stated that only a coat of paint was required to finish the job. The tenant denied having refused entry but agreed that the work was almost done.

On August 30, the landlord served the tenant with a notice to end tenancy for cause. The tenant failed to pay rent for September and the landlord served the tenant with a second notice to end tenancy on September 02, 2010. The tenant paid \$400.00 on September 15, 2010 and at the time of the hearing, still owed the landlord \$400.00. The landlord has applied for an order of possession effective two days after service on the tenant and for a monetary order for the balance of September's rent.

The tenant stated that the leak caused water to drip through the electrical outlets and soaked up the carpet. He also stated that some of his furniture got ruined, but did not file any evidence to support this. The tenant has applied for a monetary order for compensation which consists of \$1,200.00 for the return of partial rent for the months of June, July and August and \$1,000.00 for the loss of quiet enjoyment of the rental unit. The tenant has also applied to be compensated for the loss of his furniture in the amount of \$800.00

### **Analysis**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement.

The tenant received the notice to end tenancy for non payment of rent on September 02, 2010 and did not pay overdue rent as of the date of this hearing. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement. Since I have upheld the notice to end tenancy for nonpayment of rent, I find that it is unnecessary to discuss the reasons for the notice to end tenancy for cause.

I also find that the landlord is entitled to a monetary order of \$400.00 for unpaid rent. Since the landlord has proven his case, he is entitled to the recovery of the filing fee. Overall the landlord has established an entitlement of \$450.00.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

The landlord started repair on the roof on August 10. Due to a down pour, water leaked into the unit and the tenant suffered some inconvenience. However, I find that the landlord acted responsibly and the roof work was completed shortly thereafter.

I find that the tenant may have been inconvenienced while the work was on going, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Even though the landlord was in the process of fixing the roof, I find that the tenant was inconvenienced by the leak and is therefore entitled to some compensation. I find it appropriate to award the tenant \$100.00 as nominal damages for the inconvenience that he endured during the repair work.

The tenant did not file any evidence to support his claim of damage to his furniture. Accordingly I dismiss the tenant's application for \$800.00 for damage to his furniture. Since the tenancy is ending, it is unnecessary to order the landlord to carry out repairs or reduce the rent. The tenant must bear the cost of filing his application.

The landlord has established a claim of \$450.00. I order that the landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and accordingly I find the landlord is entitled to a balance of \$50.00.

The tenant has established a claim of \$100.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the balance due of \$50.00.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant. The landlord may retain the security deposit of \$400.00.

I grant the tenant a monetary order in the amount of **\$50.00**.

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 27, 2010.

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Dispute Resolution Officer