



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of documents upon them and I accepted all documentary.

As a preliminary issue I noted that two tenants were identified in making the Tenant's Application for Dispute Resolution yet only one tenant was identified on the Landlord's Application for Dispute Resolution. I determined that only one of the named tenants had signed the tenancy agreement. Thus, I find the female that appeared on behalf of the tenant is an occupant and not a tenant. Accordingly, the style of cause reflects a male tenant only.

### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy?
2. Has the landlord established an entitlement to unpaid rent?
3. Can the parties reach a mutual agreement to resolve this dispute?

### Background and Evidence

The parties provided undisputed testimony as follows. The parties signed a tenancy agreement on June 21, 2010 and the tenant paid a \$500.00 security deposit on that date. The tenancy agreement provides that the tenant would pay rent of \$1,000.00 on the 1<sup>st</sup> day of every month. The tenancy agreement also contained an Addendum which provided that the tenant would make certain repairs to the property and upon inspection by the landlord, either personally or by digital photographs, the tenant would be permitted to deduct \$200.00 from a subsequent month's rent. For the month of July 2010 the tenant paid \$468.20 in rent and provided the landlord with a bill for \$531.80 for work performed on the property. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on July 10, 2010. The tenant disputed the Notice but did not pay the outstanding rent within five days of receiving the Notice. The landlord filed for an Order of Possession on July 16, 2010.

I also heard that the tenant paid the rent for August 2010 and has supplied a rent cheque for September 2010. The landlord stated that she did not have any communication with the tenant with respect to acceptance of the rent for August or continuation of the tenancy.

The landlord submitted that the tenant did not have the authority to make repairs to the property beyond the repairs outlined in the Addendum in exchange for compensation. Although the landlord has not inspected the repairs outlined in the Addendum the landlord accepted that the tenant had done the work and agreed to deduct \$200.00 from the landlord's claim for unpaid rent.

The tenant was of the position that he had performed other work to make the unit liveable including emergency repairs. The landlord was willing to accept that some work to the stairs may have constituted an emergency repair. The tenant submitted that

he purchased a large box of screws and spent a couple of hours strengthening the stairs.

The landlord offered to compensate the tenant an additional \$180.00 for labour performed at the property and the tenant accepted this offer in satisfaction of the repair work performed at the property.

The parties further agreed that the tenancy would continue until September 30, 2010 at which time the tenant would vacate the rental unit. Further, the tenant would ensure rent is paid for the month of September 2010. The landlord requested an Order of Possession effective September 30, 2010.

### Analysis

Under section 26 of the Act a tenant must pay rent when due under the tenancy agreement unless the tenant has the right to withhold rent. The right to withhold rent is provided under specific sections of the Act, such as in the case of emergency repairs, or where the landlord consents to a deduction from rent or the tenant has obtained the authority of a Dispute Resolution Officer to withhold rent.

Even if a landlord and tenant have entered into a contract for services, such as repair work, unless the landlord agrees, the tenant does not have the right to deduct the compensation for services rendered from rent payable. Rather, a person that performs services for another party and has not received payment in accordance with the service contract must make a claim in the appropriate form, such as Provincial Court.

In this case, there was an agreement between the parties with respect to withholding \$200.00 from rent once certain terms were met but I do not find sufficient evidence of an agreement for other deductions. It is apparent the tenant was of the position he was providing additional services to the landlord and felt entitled to be compensated but by withholding more than \$200.00 the tenant has essentially co-mingled two separate

contracts, namely a tenancy agreement and a services contract. The Act; however, does not permit the tenant to compensate himself for services by withholding rent and a services contract cannot be heard by way of an application under the Residential Tenancy Act. Therefore, the only matter for a Dispute Resolution Officer to determine in such a case is the amount of rent and the agreed upon deductions, if any.

Where a tenant receives a 10 Day Notice for unpaid rent and disputes the Notice the tenant must be able to show that the tenant either paid the rent owed or had the right to make a deduction from rent. In this case, I am satisfied the terms of the Addendum had not been fulfilled as of July 1, 2010 as an inspection had not yet taken place, nor had photographs yet been provided to the landlord. Therefore, the tenant did not have the right to withhold the \$200.00 for contract work for the month of July 2010.

With respect to the other work performed by the tenant in addition to the work described on the Addendum, I found insufficient evidence the tenant had the authority to do the work and had the landlord's agreement to withhold a certain amount from the rent.

In light of the above findings, I do not find a basis to cancel the Notice to End Tenancy. However, in recognition of the mutual agreement to end the tenancy as of September 30, 2010 I order the tenant to vacate the rental unit no later than September 30, 2010 and I provide the landlord with an Order of Possession effective September 30, 2010. The tenant is required to pay rent for the month of September 2010.

In recognition of the mutual resolution reached between the parties during the hearing, the landlord's monetary claim for unpaid rent is reduced \$200.00 for the contract work performed by the tenant and a further \$180.00 for additional work performed by the tenant in satisfaction of all of the work performed by the tenant at the residential property.

As the landlord was largely successful with this application, I award the filing fee to the landlord. I provide the landlord with a Monetary Order in the total amount of \$201.80 calculated as follows:

Unpaid rent – July 2010	\$ 531.80
Less: contract work performed by tenant	(200.00)
Less: additional work performed by tenant	(180.00)
Plus: filing fee paid by landlord	<u>50.00</u>
Total Monetary Order for landlord	\$ 201.80

The Monetary Order must be served upon the tenant to be enforceable. The Monetary Order may be satisfied by withholding that amount from the security deposit if the amount remains outstanding at the end of the tenancy.

### Conclusion

The tenancy shall end September 30, 2010 by mutual agreement. The parties have settled their monetary claims for unpaid rent and work performed by the tenant. The landlord has been provided a Monetary Order for the net amount of \$201.80 to serve upon the tenant. The Monetary Order may be satisfied by deducting \$201.80 from the security deposit if the Monetary Order has not been paid by the end of the tenancy.

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 02, 2010.

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Dispute Resolution Officer