



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 6, 2010.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the hearing package) by personal delivery on August 10, 2010. Based on the evidence give by the Tenants, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absence.

### Issues(s) to be Decided

1. Should the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be cancelled.

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### Background and Evidence

This tenancy started on August 1, 2009 as a month to month tenancy and the Tenants moved out August 13, 2010. Rent was \$800.00 per month and water fee of \$25.00 per month was due on the 1st of each month. The tenants said they paid a security deposit of \$400.00 at the beginning of the tenancy.

The Tenants said they moved out of the rental unit because the Landlord did not repair the rental unit when asked to. The Tenants said they advised the Landlord of a black mold problem in the walls of the unit in February, 2010 by telephone. They said the Landlord said that they would look at the problem when they had more tenants in the building. The tenants said no repairs or action to correct the black mold problem was done while they were in the unit. The Tenants continued to say that they reported a broken window to the Landlord in early July, 2010. The repair person said they could not replace the glass and that the complete window would have to be replaced. The Tenants said the window was not repaired. They continued to say the broken window was a security issue and safety risk to them while living in the rental unit. The Tenants said they are low income and depended on the Landlord to do repairs to the rental unit.



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The Tenant said they would pay the rent to August 13, 2010 as they occupied the unit until that date.

## Analysis

Section 26 (1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent .

Section 32 (1) says a Landlord must provide and maintain residential property in a state of decoration and repair that:

(a) complies with the health, safety and housing standards required by law,

I find that the Tenants are obligated to pay rent for a portion of August, 2010 under s. 26 of the Act.

As well I find that the Landlord did not meet his/her obligations under s. 32 of the Act. It is clear that the Tenants made the Landlord aware of repair issues and the Landlord didn't complete the repairs. This situation caused the Tenants to seek different accommodations.

As a result of both parties did not meet their obligations. I find that the Tenants application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities is dismissed. As well, I find that the Tenant owes the Landlord for rent from August 1 to August 13, 2010. **The** Tenant gave the Landlord moving out notice in the last week of July, 2010. I Order the Landlord to retain a portion of the security deposit, \$345.98 as **full settlement** of the Tenant's rent and water fee from August 1 to August 13, 2010.

Rent August 1 to 13, 2010	$\$800 \times 13/31 = \$335.48$
Water Fee August 1 to 13	$\$25 \times 13/31 = 10.48$
TOTAL	<u>\$345.96</u>



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## Conclusion

The Tenant's application to cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is 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 01, 2010.

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Dispute Resolution Officer