



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, MNDC, RP, FF

### Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. Seeking a monetary order for compensation for damage or loss in the sum of \$2,871.10;
3. Seeking an Order that the landlord make repairs; and
4. Seeking an Order to recover the filing fee paid for this application.

The tenant testified that he was served with the Notice to End Tenancy for cause on September 15, 2010. His application to cancel the Notice to End Tenancy was filed on September 17, 2010 and I therefore find his application to be filed within the proper time limits.

Both parties appeared at the hearing of this matter and gave evidence under oath.

The landlord's son appeared as agent on the landlord's behalf. The agent testified that he knows nothing of the matters surrounding the issuance of the Notice to End Tenancy for cause and is attending the hearing to seek an adjournment on behalf of his father the landlord. The agent testified that the landlord was unable to attend in person at the conference call hearing because the landlord's mother passed away three weeks ago. The agent testified that the landlord is busy attending to last rites for his mother and dealing with estate issues. The agent requested an adjournment of the matter. The tenant did not consent to the adjournment. With respect to adjournments the Residential Tenancy Branch Rules of Procedure state as follows:

**Rescheduling of a dispute resolution proceeding by consent more than three days in advance**

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

The evidence of the landlord's agent is that the landlord was informed three weeks ago that his mother had passed away. There has been no evidence submitted that the landlord attempted to comply with the Rules of Procedure to seek the consent of the tenant and to request an adjournment up to three business days prior to the hearing. The tenant submits that he does not agree to the adjournment as the dispute involves the possible end of his tenancy and the landlord has had time to make seek an adjournment through the proper means. I agree with the tenant's argument in this matter, I find that the landlord had sufficient time to seek an adjournment in accordance with the Rules of Procedure but did not do so. I therefore decline the landlord's request for an adjournment.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy? Is the tenant entitled to a monetary order for compensation or loss in the sum sought? Should the landlord be compelled to make repairs? Finally, is the tenant entitled to recover the filing fee paid for this application?

Background and Evidence

With respect to the Notice to End Tenancy given for cause the landlord's agent says he has evidence but no knowledge of the reasons for the issuance of the Notice.

With respect to the claim by the tenant for a monetary award in the sum of \$2,871.10, the tenant testified that this sum is the sum sought for repairs he made to the rental unit. The tenant testified that he is a contractor and he had a verbal agreement with the landlord to make repairs to the rental unit. The tenant submitted an invoice for services rendered by him to the landlord for the repairs dated September 6, 2010 which the tenant says the landlord has not paid.

With respect to his claim for repairs to be performed the tenant testified that all of the repairs are now complete.

#### Analysis and Findings

I find that the landlord has failed in his burden of proving he has cause to end this tenancy. The Notice to End Tenancy for cause issued on September 9, 2010 is therefore set aside and is of no force or effect.

Based on the evidence of the tenant I find that his claim for a monetary award is for remuneration for labour performed and therefore not within the jurisdiction of the *Residential Tenancy Act*. The claim is therefore dismissed.

As the tenant has testified that the repairs are now complete the tenant's application seeking to have the landlord compelled to make repairs is dismissed.

As the tenant has been successful in his application seeking to cancel the Notice to End Tenancy I will allow him to recover the filing fee paid for this application. The tenant is directed to deduct \$50.00 from his next rental payment to realize this recovery.

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