



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, CNR, MNDC, OLC, RP, 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 landlord. Both files were heard together.

### Tenant's application

First of all it is my decision that I will not deal with all the issues that the tenant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue, to be dealt with together.

I therefore will deal with the request for an order setting aside a 10 day Notice to End Tenancy and the request for the landlord to bear the cost of the filing fee, and I dismiss the remaining claims, with liberty to re-apply.

Further a portion of the tenants claim was a request for administrative penalties to be enforced against the landlord; however I have no authority to issue administrative penalties.

## Landlord's application

The landlord's application is a request for an Order of Possession based on a 10 day Notice to End Tenancy for non-payment of rent, and a request for an order for the tenant to bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

## Background and Evidence

The tenant testified that:

- In a previous hearing the landlord was ordered to provide Suite 305 for her to move into for September 1, 2010.
- On September 1 the landlord informed her she could not move into Suite 305 as it was occupied however he offered Suite 307.
- Suite 307 was in no condition to occupy and therefore she refused to move into Suite 307.
- She has therefore withheld the rent because the landlord has failed to provide the suite that was ordered.
- She believes the 10 day Notice to End Tenancy should be cancelled as she does not believe she should have to pay rent for that suite that she is in when she was supposed to have been moved into Suite 305.

The landlord testified that:

- Suite 305 should not have been put on the previous dispute resolution officer's order, as that is an occupied suite; the proper suite that was being offered to the tenant was Suite 307.
- He did prepare Suite 307 for the tenant to move into, however she refused to do so and pointed out some problems that she felt existed in the suite.
- He took the tenants list and repaired all the issues that were pointed out and yet she still refused to move into Suite 307 stating she was going to stay in Suite 205.
- He had decided to waive the rent for September 2010 as the tenant would be in the throes of a move, however when she failed to move and refused to pay rent for the month of October 2010 as well, he decided it's was unreasonable and therefore issued the 10 day Notice to End Tenancy.
- The tenant continues to occupy Suite 205 and continues to refuse to pay rent and so now November 2010 rent is also outstanding.
- He is therefore requesting an Order of Possession for the rental unit for as soon as possible.

## Analysis

The tenant claims that she is refusing to pay rent because the landlord has not supplied her with the rental unit she was supposed to move into for September 1, 2010 however it is my decision that she does not have the right to withhold the rent.

The landlord was ordered to supply the tenant with Suite 305 for September 1, 2010 and if he failed to do so then she could have filed a request for an Order of Possession of that suite, or filed a claim for damages however she did not have the right to withhold the rent for the suite she was still occupying.



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If the tenant felt that she should not be paying rent for the suite she was still in she would have had to first get an order from a Dispute Resolution Officer allowing her to withhold rent however she did not do that and instead withheld the rent unilaterally.

Therefore since the tenant has withheld the rent without the authority to do so, I am not willing to set aside the Notice to End Tenancy and this tenancy therefore ends pursuant to that notice.

## Conclusion

### Tenants application

The tenant's application to have the Notice to End Tenancy cancelled is dismissed without leave to reapply.

### Landlords application

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant and I further order that the tenant bear the \$50.00 cost of the filing fee that the landlord paid for his application for dispute resolution.

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: November 04, 2010.

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Dispute Resolution Officer