



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, CNR, OLC, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent, for money owed or compensation under the Act or tenancy agreement, for orders for the Landlord to comply with the Act or tenancy agreement, to make repairs to the rental unit and to recover the filing fee for the Application.

The Landlord applied for an order of possession, a monetary order for unpaid rent, for compensation under the Act or tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

There was insufficient evidence that either party submitted a copy of the Notice to End Tenancy in evidence for the hearing. At the outset of the hearing, and with the agreement of the Tenant, the Landlord sent in a copy of the Notice by facsimile.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?

Should the Landlord be compelled to make repairs or pay the Tenant any compensation?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

## Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on December 2, 2010, by posting on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the Notice and submitted that the Landlord had failed to make repairs to the rental unit for 22 months. According to the testimony of the Tenant the municipal authority has ordered the Landlord to repair the balcony of the rental unit. The Tenant also testified he was without heat in the rental unit for three days. The Tenant testified he withheld the rent as he felt the Landlord had enough time to make these repairs and failed to do so.

The Agents for the Landlord testified that the Tenant had failed to pay rent in the amount of \$751.30 for December of 2010 and \$751.30 for January 2011.

The Tenant testified that he paid a security deposit of \$350.00 on March 1, 2007.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid rent to the Landlord for two months.

The Tenant had insufficient evidence that repairs were ordered by the municipality, such as a letter or other documents, compelling the Landlord to make repairs. Regardless of this, section 26(1) of the Act states:

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 this Act to deduct all or a portion of the rent.



## Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

The Tenant had no order from the Residential Tenancy Branch allowing him to withhold rent, nor did he make emergency repairs which might allow him to withhold rent under the Act. Furthermore, he did not pay rent to the Landlord in the month after the month he had filed his Application.

Therefore, I dismiss the Application of the Tenant and find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of \$1,552.60 comprised of two months of rent at \$751.30 for each month and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of \$359.72 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,192.88**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: January 06, 2011.

---

Residential Tenancy Branch