



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, FF, MNDC, MNR, O

### 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.

### Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have 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 to cancel a Notice to End Tenancy, and I dismiss the remaining monetary claim with liberty to re-apply.

### Background and Evidence

The landlord testified that:

- The tenant failed to pay the November 2010, and December 2010 rent of \$3100.00 per month, for a total of \$6,200.00.

- Because of the outstanding rent, on December 16, 2010 he served the tenants with a 10 day Notice to End Tenancy for non-payment of rent.
- The tenants have failed to vacate the rental unit, and the full \$6,200.00 is still outstanding.

The landlord is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

The tenant testified that:

- They have had many problems with the rental unit and have had to have many repairs done on their own.
- Since the landlord has failed to act on requests for repairs, and since they do not believe they are getting full value for the rent they have paid, they decided to withhold the rent.
- They also believe that some of the repairs can be considered emergency repairs and therefore they had the right to deduct the amounts from the rent.
- They do not believe they should have to pay this rent and therefore they believe the Notice to End Tenancy should be cancelled.

The applicants are therefore requesting that the Notice to End Tenancy be cancelled and that this tenancy continues.

## Analysis

The tenants do not have the right to unilaterally withhold the rent, and if they do so they risk the possibility of being evicted for non-payment of rent.

Tenants can deduct money paid for emergency repairs under certain conditions, but I am not convinced that those conditions have been met.

Section 33 of the Residential Tenancy Act states:

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

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- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and
  - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
  - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
  - (c) the amounts represent more than a reasonable cost for the repairs;
  - (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this case I am not convinced that the tenants met all of the above requirements before deducting money from the rent, nor am I convinced that there was \$6,200.00 in emergency repair costs paid for by the tenants.



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Therefore since the tenant has withheld the rent without the authority do so the landlords Notice to End Tenancy is a valid notice, I will not set it aside, and this tenancy ends pursuant to that notice.

## Conclusion

The tenant's application to cancel the 10 day Notice to End Tenancy is dismissed without leave to reapply and I have issued an Order of Possession to the landlord for five days after service on the tenants.

As stated earlier the tenant's application for a monetary order is dismissed with 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: January 13, 2011.

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