



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR, CNR, OPB, MNR, AS, RR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord was seeking an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; an order to allow her to sublet or assign the rental unit; and an order to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the tenant and her advocate. The tenant had arranged for two witnesses to be present, however their testimony was not heard.

As this hearing was convened for both applications I find that the landlord was sufficiently aware of the hearing for the purposes of the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and for a breach of an agreement; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order allowing the tenant to sublet or assign the rental unit; to reduce the rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 32, 34, 46, 67, and 72 of the *Act*.

### Background and Evidence

The tenancy began on November 1, 2010 as a month to month tenancy for \$700.00 per month plus ½ the utilities. The tenancy agreement does not state the date that rent is due in the rental period.

Both parties submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 10, 2011 with an effective vacancy date of January 20, 2011 for \$700.00 in unpaid rent due on January 1, 2011 and \$214.00 in unpaid utilities after a written demand was made on December 15, 2010.

The tenant testified that she had paid rent in the amount of \$375.00 to the landlord via direct payment from the Ministry of Social Development prior to January 1, 2011 and that the landlord has disallowed the tenant to have any roommate after her last roommate moved out and so she cannot pay the full \$700.00. The tenant also testified that the landlord has never once shown her any utility bills.

The tenant also testified that on December 27, 2010 the landlord demolished the bathroom and replaced the toilet on December 28, 2010. To the date of this hearing the landlord had not reinstalled the bathroom sink or shower. As a result, the tenant has been using the kitchen sink for personal hygiene and has had find alternate resources for showering.

The tenant has also testified that since these issues have developed with the landlord, she has been causing disturbances to the tenants quiet enjoyment of the rental unit in the form of loud stomping across the upstairs floor; loud television noises, and yelling at the tenant through the door.

### Analysis

In the absence of the applicant landlord; with no date on the tenancy for rent is due; and in the absence of any utility bills to determine any amount owed for utilities, I dismiss the landlord's application in its entirety, without leave to reapply.

As a result, I grant the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on January 10, 2011 and find the tenancy to remain in full force and effect.

Section 32 of the *Act* requires the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 27 states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit. I find that a fully functioning bathroom is a service/facility that is essential to the tenant's use.

I find that by removing the bathroom the landlord has failed to meet her obligations under Sections 27 and 32 and I order until such time as the landlord has reinstated the bathroom to its full functionality and has received an order from a Dispute Resolution Officer to increase the rent to its original amount the tenant is entitled to a rent reduction in the amount of \$350.00 per month.

As the tenant has already paid rent for the months of January and February 2011 in the amount of \$375.00 per month or a total of \$750.00 and in accordance with the above, I order the landlord to return to the tenant \$25.00 for each of those months for a total of \$50.00.

In addition, based on the undisputed testimony from the tenant, I find the landlord has failed to fulfil her obligations under Section 28 to ensure the tenant has quiet enjoyment including freedom from unreasonable disturbance. As a result, I find the tenant is entitled to \$100.00 as compensation for the loss in value of the tenancy, for this period. The tenant remains at liberty to file a new Application for Dispute Resolution for any further disturbances.

I also note that there is nothing under the *Act* or the tenancy agreement as submitted that allows the landlord to restrict the tenant's ability to find a roommate, as a rule of the tenancy. While I find the landlord is not allowed to restrict the tenant from having a roommate, I also note the landlord has the right to accept an acceptable candidate as a tenant.

### Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$150.00** comprised of \$50.00 rent reduction owed and \$100.00 in compensation for loss of quiet enjoyment.

This order must be served on the landlord and 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: February 07, 2011.

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Residential Tenancy Branch