



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, LRE, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and to suspend or set conditions on the landlord's right to enter the rental unit.

The hearing was conducted via teleconference and was attended by the tenant, the landlord's agent and two witnesses.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice for Unpaid Rent; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and to restrict the landlord's access to the rental unit, pursuant to Sections 28, 29, 32, and 46 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on January 31, 2011 as a 1 year fixed term tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid.

On May 31, 2011 Dispute Resolution Officer (DRO) XXXXXX granted the tenant a monetary award of \$125.00 to be deducted from a future rent payment and a \$500.00 per month rent reduction until such time as the landlord:

1. Retain a competent glass replacement firm to immediately replace the broken glass panel in the rental unit;
2. Repair four non-functional window cranks so that the windows may be opened and close; and
3. Remove the mold stains and paint the bathroom ceiling.

The landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on November 2, 2011 with an effective date of November 12, 2011 for unpaid rent in the amount of \$3,125.00, equivalent to the amount consistent with the above noted order, over the relevant time period.

The landlord's agent testified the landlord never received any notice of the hearing held on May 31, 2011 that resulted in the above decision and that even after the hearing the landlord never received a copy of the decision either from the DRO or from the tenant.

The landlord testified that they have had some mailbox break-ins over recent months and that they were undergoing some staffing changes at this same time. The landlord testified that it was not until the beginning of October that they realized the tenant had been paying only ½ the amount of his actual rent.

The landlord testified that they asked the tenant about why he was doing this and he told them that he had a decision and order allowing him to do so but did not provide a copy of the decision to the landlord. The tenant testified that he has provided the landlord with 4 copies of the decision.

The tenant states he provided the landlord with a copy on May 31, 2011; another one on June 15, 2011; another on July 15, 2011 and another one in the evidence package provided for this hearing. The landlord testified the first time the landlord received a copy of the decision was in the tenant's evidence package for this hearing.

The tenant also testified that he provided a clear notation on his cheques every time he paid rent as to why he was deducting the \$500.00. The tenant did not provide copies of his cancelled cheques confirming this testimony.

The landlord testified that once they did receive a copy of the decision maintenance staff attempted to gain access to the rental unit by providing 24 hour notice to the tenant that they would be entering to deal with the repairs.

The landlord and both witnesses confirmed that the tenant would not let them enter the unit because the tenant stated the landlord had not provided adequate notice. The landlord's witness testified that he tried to get the tenant to provide an alternate time to enter and the tenant refused. The landlord states they need to enter in order to determine what repairs are necessary before they hire someone to do it.

The tenant testified that he doesn't want the landlord to enter and seeks to have only a professional 8<sup>th</sup> floor window installer enter to complete the repairs. The tenant also testified the landlord attempted entry a couple of weeks prior to this hearing stating it was to fix a plumbing problem in the rental unit below.

The tenant asserts he has spoken to the tenant below him who indicates there is not and was not a plumbing problem. The tenant asserts the landlord is trying to gain access unlawfully and seeks an order to restrict the landlord from ever entering the rental unit.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 26 states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The decision provided by DRO XXXXX on May 31, 2011 authorized the tenant to deduct \$500.00 per month in pursuant to the *Act*.

As such, I find the tenant had authority to deduct the amounts he has since the order was issued and therefore I also find the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2011 to be ineffective.

However, as the tenant has provided no documentary or corroborating evidence to support his claim that he provided the landlord with a copy of the decision 3 times before he provided them with the evidence for this hearing, I find it likely the landlord was unaware of the decision and orders until the landlord was served with the evidence package for this hearing.

Based on the tenant's displayed understanding that the decision would have been mailed to the landlord after the previous hearing I find it unlikely that the tenant would have felt it necessary to voluntarily provide the landlord with any copies of the decision once, let alone 3 times. I also find it unlikely that the tenant provided a written explanation on his rent cheques each month.

Based on the balance of probabilities, I find it extremely unlikely that a reasonable person would give up income of \$500.00 per month in an ongoing basis and indefinitely

by refusing to repair something that is likely to cost less than the amount deducted from the rent over the course of a couple of months.

I therefore accept the landlord was unaware of the decision and its constituent orders. I also accept that the landlord, once in receipt of the decision in the tenant's evidence package, attempted to follow through with the order. I find that by the tenant's denial of access to the rental unit the tenant has prevented the landlord from trying to fulfill the order granted by DRO XXXXX in the May 31, 2011 decision.

While neither party provided a copy of the landlord's notice of entry I am therefore not in a position to determine if the notice given was in accordance with the *Act*, I note here the requirements for any future notices of entry the landlord may wish to provide.

Section 29 restricts the landlord from entering a rental unit to the following circumstances:

1. The tenant gives permission at the time of entry or not more than 30 days before the entry;
2. At least 24 hours and not more than 30 days before the landlord gives the tenant written notice that includes the purpose for entering (which must be reasonable) and the date and time of entry;
3. The landlord has an order of the director authorizing entry; or
4. An emergency exists and the entry is necessary to protect life or property.

I note that with the exception of number 1 above the landlord does not require the tenant's permission to enter if anyone of conditions 2, 3, or 4 is met. I also note that while number 2 specifies the date and time of entry a time range is acceptable as long as it is between 8:00 a.m. and 9:00 p.m.

Based on all the testimony provided to me in this hearing, I find the landlord's attempts at entry to the rental unit are allowable under the *Act* and in fact the tenant's actions of not allowing entry are contrary to the *Act*. I therefore dismiss the portion of the tenant's Application seeking to restrict or suspend the landlord's right to access.

Further, I order the tenant to not restrict the landlord's access to the rental unit as long as the landlord's access is required and obtained in compliance with Section 29. I note that should the tenant fail to comply with this order, the landlord may consider they have grounds to end the tenancy for the tenant failing to comply with an order of the director, in accordance with Section 47 of the *Act*.

I also dismiss the tenant's request to allow only a hired company access to the unit as it would restrict the landlord in their ability to ensure they are complying with both the previous order by DRO XXXXX and their obligations under Section 32 to provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

As a result of the tenant's non-cooperation with the landlord on both the provision of a copy of the previous decision and order and then by refusing the landlord entry to begin repairs I find it unfair to the landlord to continue the tenant's rent reduction. As such, effective December 1, 2011 I order the rent reduction to be cancelled and the tenant to pay the full amount of rent as per the tenancy agreement.

If the landlord fails to comply with the repair components of the DRO XXXXX's decision within a reasonable time the tenant may make an Application for Dispute Resolution seeking compensation for the landlord's failure to comply with an order of the director.

### Conclusion

For the reasons noted above and in addition to the orders listed above, I grant that the tenant may cancel the notice to end tenancy and I find the tenancy to be in full force and effect.

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 25, 2011.

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Residential Tenancy Branch