



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RP, LRE, LAT, RR, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, requesting an order to cancel a 10 day Notice to End Tenancy for unpaid rent, for monetary compensation under the Act or tenancy agreement, for the Landlord to comply with the Act or tenancy agreement, for the Landlord to make repairs to the rental unit, to limit the Landlord's right to access the rental unit, to reduce the rent for facilities agreed upon but not provided by the Landlord, 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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Notice to End tenancy valid or should it be cancelled?

Are the Tenants entitled to the other relief sought?

### Background and Evidence

The parties entered into a one year fixed term tenancy agreement, which was signed on June 22, 2011, and the tenancy began on July 1, 2011. The Tenants and the Landlord agreed the monthly rent was to be \$1,350.00. The Landlord collected a security deposit of \$675.00 and a damage deposit of \$675.00, on or about July 1, 2011. The Landlord included appliances in the tenancy agreement, including but not limited to a stove, a clothes dryer and a clothes washer. The Agent for the Landlord testified the Landlord had included a clause in the tenancy agreement that the Tenants must repair the appliances themselves.

The Tenants discovered that the Landlord was not allowed to charge them a security deposit in excess of ½ a month's rent and in November gave the Landlord a cheque for rent in the amount of \$675.00, and the Landlord was to use \$675.00 overpaid as a damage deposit towards the balance of rent due.

The Landlord alleges the cheque for \$675.00 was refused by the bank. The Tenants testified that the Landlord issued them the 10 day Notice to End Tenancy for unpaid rent on November 10, 2011. They testified that they offered to pay the Landlord the \$675.00 in rent but the Landlord refused to accept the rent or refused to cash the cheque.

The Tenants testified that the clothes washing machine in the rental unit stopped working. They asked the Landlord to repair it, however, the Landlord said it would cost too much to repair. Furthermore, the Landlord relied on the clause in the tenancy agreement requiring the Tenants to repair the appliances themselves. The Tenants replaced it themselves, but request the Landlord pay for the cost of the clothes washer, in the amount of \$861.27.

The Tenants testified that when they tried to install their portable dishwasher the Landlord refused to allow them to connect it to the taps. According to the Tenants they are willing to pay for a professional plumber to install a connection for their dishwasher and then at the end of the tenancy pay to have it removed.

The Tenants also allege that the stove is not working properly at the rental unit. They have to install a fuse each time they want to use it and then take the fuse out when they are finished, otherwise when the fuse is in, the clock on the stove makes a loud grinding noise.

The Landlord replied that the stove and oven work fine and can be used everyday.

As to the requests that the Landlord abide by the Act and provide proper Notice to the Tenants when attending the rental unit, the Tenants testified that the Landlord now seemed to understand this and are no longer requesting this and the related relief.

### Analysis

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

**I order that the 10 day Notice to End Tenancy for unpaid rent be cancelled.** I find that the Tenants attempted to pay the Landlord the November rent due, less the overpayment of the damage deposit, and the Landlord refused the rent payment.

Under section 19 of the Act, the Landlord is only allowed to charge the Tenant a security deposit equivalent to  $\frac{1}{2}$  of a months' rent. The Landlord also charged a damage deposit of  $\frac{1}{2}$  month rent. Under section 19(2) the Tenants were allowed to deduct the  $\frac{1}{2}$  month overpaid. The Landlord argued that Tenants agreed to this when they signed the tenancy agreement. I explained to the parties that under section 5 of the Act, neither the Landlord nor the Tenants are allowed to avoid or contract out of the Act.

The Landlord must not refuse the rent for November 2011, and the Tenants must pay the Landlord \$675.00 for November rent before November 30, 2011. This will extinguish the Tenants' right to return of the damage deposit of \$675.00 which was overpaid to the Landlord. The Landlord will deal with the \$675.00 security deposit in accordance with the Act at the end of the tenancy.

**I order that the Landlord must repair or replace the stove before November 30, 2011.** I find that it is dangerous for the Tenants to have to install a fuse then remove a fuse each time they want to use the stove, even if it is just to avoid a noisy clock. If the Landlord fails to repair or replace the stove, the Tenants may make a further Application to reduce the rent.

**I order that the clause in the tenancy agreement that requires the Tenants to maintain the Landlord's appliances is void.** The Tenants are only responsible to repair the Landlord's appliances if they damage them beyond the normal wear and tear allowed in the Act.

**I order that the monthly rent is reduced by \$50.00 per month to compensate the Tenants for the loss of use the clothes washing machine supplied by the Landlord.** By not repairing the clothes washing machine the Landlord terminated a service or facility which was agreed to in the tenancy agreement. In this particular tenancy, I find that \$50.00 is equivalent to the reduction in value of the tenancy agreement as a result of the Landlord not repairing or replacing the clothes washing

machine. At the end of the tenancy the Tenants may remove the clothes washing machine, as it remains their personal property. The reduction in rent will begin with the December 2011 rent payment.

**I order that, if the Tenants still request to use their portable dishwashing machine in the rental unit, they may hire a professional plumbing company to have an appropriate connection installed at the sink to attach their dishwasher.** At the end of the tenancy, the Tenants must return the sink to the condition it was in when they had the connection installed, again using the services of a professional plumbing company.

As the Tenants have been successful in their Application, I order they may recover the filing fee of \$50.00 for the Application, by reducing their rent by \$50.00 for one month.

Lastly, I am providing the Landlord with a guidebook to the Act, which explains his obligations and rights under the law.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2011.

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Residential Tenancy Branch