



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, RR

### Introduction

This hearing was convened by way of conference call in repose to the tenants application to cancel the 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order to reduce his rent for repairs, services or facilities agreed upon but not provided.

The tenant testifies that service of the hearing documents to the landlord was done in accordance with section 89 of the *Act*, given in person to the landlord's office on November 17, 2011.

The tenant appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End tenancy for unpaid rent cancelled?

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss?
- Is the tenant entitled to reduce his rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The tenant declares that this month to month tenancy started approximately seven years ago in 2005. The tenant pays a subsidized rent of \$375.00 per month.

The tenant testifies the landlord served him with a 10 Day Notice to End Tenancy on November 14, 2011. This Notice stated that the tenant owed rent of \$750.00 for October and November, 2011. The Notice gave the tenant five days to pay the outstanding rent or file an application to cancel the Notice. The tenant filed his application to dispute this Notice on November 17, 2011 as the tenant testifies he does not owe rent of \$750.00.

The tenant testifies that his unit is single room occupancy with shared kitchen and bathroom facilities. The tenant states another tenant moved out whom he had been friends with and the landlord doubled his rent in January, 2010 to \$750.00 because of this. The tenant states the tenant that moved out rented her own room from the landlord and did not live with the tenant.

The tenant testifies he was working for the landlord at that time so from January, 2010 to August, 2010 the Landlord deducted \$187.50 from the tenants pay every two weeks. The tenant states he was also on welfare during this period and they were also paying his rent to the landlord of \$375.00 from January, 2010 to August, 2010. The tenant states he has therefore overpaid his rent for this eight month period. The tenant states his pay slips provided in evidence show the landlord deducted \$5,062.50 from his pay in 2010 and Welfare paid \$3,000.00 for the same period. A total amount of \$8,062.50 was

paid in rent and the tenant has calculated that he should have paid \$4,500.00 for that period. The tenant has provided documentary evidence from Welfare showing the amount they paid in rent for the tenant to the landlord.

The tenant seeks to recover this over payment of rent to the sum of \$3,375.00.

The tenant testifies that there had been a water leak from another unit which caused damage to the tenant walls and ceiling in his unit. The tenant states he did some drywall repairs himself for the landlord. This leak originally started early in 2010. The tenant states he verbally spoke to the landlord about the leak and the landlord eventually came to the tenants unit in the summer of 2010 and put a hole in the shared kitchen wall which has never been repaired despite requests from the tenant to the landlord.

The tenant testifies the floor in the shared bathroom was rotten and the tenant repaired this and replaced the tub, toilet and sink. The tenant testifies that the landlord shut the water off to the bathroom again on October 16, 2011. The tenant wrote to the landlord to remind them that they had shut the water off and failed to turn it back on again. The tenant states he has to use the shared bathroom on the floor above and has not had use of his own shared bathroom since October 16, 2011. The tenant has provided photographic evidence showing the damage to the unit, the kitchen and bathroom. The tenant has provided a copy of the letter sent to the landlord about the water being shut off dated October 16, 2011.

The tenant testifies that he has given the landlord written notice to end his tenancy for the end of December, 2011. The tenant is seeking a rent reduction for October, November and December, 2011 for the repairs and loss of use of the bathroom. The tenant seeks to reduce his rent by half for these months or to an amount that is deemed to be reasonable.

### Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regard to the tenants application to cancel the 10 day Notice to End Tenancy; The tenant disputes the amount of unpaid rent owed stated on the Notice. As the landlords have not appeared at the hearing today it is my decision that without any evidence from the landlord concerning the rent owed that the 10 Day Notice is cancelled and the tenancy may continue.

With regard to the tenants claim for money owed in overpayment of rent; I have considered the tenants claim in this matter and find the tenant has provided sufficient evidence to support his claim that the landlord deducted rent from his pay while also accepting rent for the tenant from Welfare for a eight month period.

The tenant has originally calculated this over payment in rent to be \$3,375.00 but I find the tenant has miscalculated this sum and it is \$3,562.50. It is therefore my decision that the tenant is entitled to a Monetary Order to recover the sum of **\$3,562.50** from the landlord pursuant to s. 67 of the Act.

With regard to the tenants claim for a rent reduction due to the landlords failure to repair the tenants unit, the shared bathroom, the shared kitchen facilities and for the loss of the use of his bathroom facilities from October 16, 2011 to December, 2011. I have considered this portion of the tenants claim and find the landlord is in breach of section 32 of the Act which states a landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I also find the landlord is in breach of s. 27(1)(a) of the Act which states a landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation.

Consequently I uphold the tenants request for a rent reduction for October, November and December 2011, for a lack of repairs and the loss of the use of the tenant's bathroom facilities. The tenant may reduce his rent for these months by 25 percent to the sum of \$93.75 per month. As this claim is retroactive the tenant will receive a Monetary Order for this rent reduction to the total sum of **\$281.25** pursuant to s. 65 and s. 67 of the Act.

The tenant has been issued with a Monetary Order for the following amount:

Overpayment of rent	\$3,562.50
Rent reduction	\$281.25
<b>Total amount due to the tenant</b>	<b>\$3,843.75</b>

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 14, 2011 is cancelled and the tenancy will continue.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,843.75**. The order must be served on the respondent and is enforceable through the Provincial Court 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: December 07, 2011.

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Residential Tenancy Branch