



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, RR, FF

### 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 an Order for the landlord to make repairs to the unit, site or property, for an Order to reduce their rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

At the outset of the hearing the tenants withdrew their application for an Order for the landlord to make repairs to the unit, site or property. The landlord did not raise any objection to this section being withdrawn.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy?
- Are the tenants entitled to an Order to reduce their rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

Both parties agree that this tenancy started on October 25, 2011. This is a fixed term tenancy which is due to expire on April 30, 2012. Rent for this unit is \$1,700.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants failed to pay rent for February on the day it was due. The landlord testifies that he served the tenants with a 10 Day Notice to End Tenancy on February 03, 2012. The landlord testifies that the Notice has an effective date of February 13, 2012. The landlord testifies that the tenants paid all the rent owed on February 13, 2012. Neither party has provided a copy of the 10 Day Notice in evidence.

The tenants seek to have the 10 Day Notice cancelled as they have paid the outstanding rent which the landlord accepted.

The tenants testify that they received a letter from the City concerning an illegal suite in the house. The tenants state the City made the landlord remove the stove, hood and the 220 volt power supply for these facilities from the downstairs kitchen early in December, 2011.

The tenants testify that when they agreed to rent this house it had a separate kitchen downstairs which suited the needs of the tenants. One tenant lived and cooked upstairs with his daughter and the other tenants lived and cooked downstairs. After the cooking facilities were removed downstairs the tenants had to share cooking facilities in the upper kitchen. The tenants' testify as this house was rented with two kitchens they seek to reduce their rent for the loss of this facility.

The landlord testifies that the stove, hood and power were removed in early December by direction of the City. The landlord testifies that the house was rented to both tenants as a whole house and not with two separate suites. The downstairs kitchen was a summer kitchen to be used in the summer months when it became too hot to use the upstairs kitchen. The landlord testifies that the tenants used the downstairs as a weight room and did not use

the kitchen. The landlord does however agree that these facilities have been removed and would agree to reduce the tenants rent by \$100.00 per month for the loss of these facilities.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the 10 Day Notice to End Tenancy; as neither party have provided a copy of this notice in evidence I am unable to determine without seeing the Notice whether or not this is a valid notice. When a notice of this nature is served upon the tenants the burden of proof lies with the landlord to provide evidence of the Notice to determine if the Notice is valid. As the landlord has not met that burden of proof the Notice is cancelled and the tenancy will continue at this time.

With regards to the tenants claim to reduce their rent due to the loss of the stove, hood and 220 volt power supply in the lower portion of the house. It is my decision that the tenants rented the house from the landlord and these facilities were included in that rent, as the facilities have now been removed the tenants are entitled to a rent reduction.

The landlord has offered to reduce the tenants rent by \$100.00 per month for the duration of the tenancy. I find as this is a second kitchen in the house the impact on the tenants in losing this stove, hood and power supply is minimal; therefore I find the landlords offer to be fair and equitable and find the tenants may reduce their rent by \$100.00 per month from December, 2011 to the end of the tenancy.

As the tenancy has two months left on its fixed term and the parties will not receive a copy of this decision until after March 01, 2012 it is my decision that the tenants will receive a Monetary Order for the rent reduction from December, 2011 to March, 2012 and if the tenancy continues after March, 2012 then the tenants are entitled to reduce their rent by \$100.00 per month for the remaining month of their fixed term.

As the tenants have been successful with their claim I find the tenants are entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Rent reduction December, 2011 to March 2012	\$400.00
Filing fee	\$50.00
Total amount due to the tenants	\$450.00

### Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent 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 \$450.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenants are entitled to reduce their rent by \$100.00 per month until the end of the fixed term tenancy agreement.

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 28, 2012.

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Residential Tenancy Branch