



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNR, MNDC, ERP, RR, OPR, MNR, MNSD, MNDC, FF

### Introduction

In the first application the tenant seeks to cancel a ten day Notice to End Tenancy for unpaid rent dated and received November 2, 2015 and for compensation for alleged deficiencies in the rental unit.

In the second application the landlord seeks an order of possession pursuant to that Notice and a monetary award for unpaid rent for November 2015 and for loss of rental income from the month of December 2015.

At hearing the landlord's claim was amended with the consent of the tenant to include a claim for loss of rent or rental income for the month of January 2016.

Both parties attended the hearing, the landlord by its representatives, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the ten day Notice is a valid notice to end the tenancy? Is the tenant entitled to compensation as alleged?

### Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started October 1, 2015 for a fixed term to December 31, 2015 and then on a month to month basis. The monthly rent is \$750.00, due on the first of each month, in advance. The landlord holds a \$375.00 security deposit.

It is agreed that there have been no rent payments made for November, December or January. The last and only money the tenant paid was the October rent and security deposit at the start of the tenancy.

The tenant testifies that the bathtub and shower in the rental unit were not functional from the start of the tenancy and that the landlord has failed to repair that facility. He says that the plastic surround had been removed. The tub/shower faucet had its handle(s) removed. As well, the tub is out of kilter and does not drain properly. He says it is not possible to either take a shower or a bath.

The tenant also says that the rental unit has smells from cigarette smoke. He says the carpets required replacement.

The tenant says that initially the landlord offered him a different suite because of the state of this one. The tenant expressed his desire to move to the new suite but in the meantime the landlord had rented it to another.

In early October the tenant send the landlord a written request for repairs dated October 8. Nothing has been done. The tenant says he would have moved earlier but rental units are hard to find.

Mr. E.J. for the landlord testified confirming the unpaid rent and noted that the landlord had sent a workman to assess the bathtub situation in October but nothing had been done.

Mr. J.C. for the landlord testified agreeing that the bathroom needed repair. He confirmed that there were no tub surround or taps for the tub/shower at move-in, nor has any repair been done.

### Analysis

It is an agreed fact that the tenant has not paid rent since October. The ten day Notice claiming unpaid rent of \$750.00, due November 1, was a proper Notice for proper amount.

Whether or not the landlord was in breach of its obligation to maintain and repair the premises imposed by s. 32 of the *Residential Tenancy Act* (the “RTA”), s. 26(1) makes it clear the tenant must continue to pay rent. It says:

(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the ten day Notice was a proper Notice and I dismiss the tenant’s application to cancel it.

As result of that Notice, this tenancy ended on November 13, 2015 and the landlord is entitled to an order of possession.

The landlord is entitled to a monetary award for the unpaid rent or for loss of rental income from the rental unit after the tenancy ended by law, for the months November 2015 to January 2016, inclusive; an award of \$2250.00.

The tenant has not provided any objective evidence in the nature of photographs or professional opinions to show that the carpet is substandard and I dismiss that item of his claim.

In regard to the smell in the rental unit, the tenant’s only evidence was that “the place smelled.” He has not demonstrated the severity of the cigarette smell to a point where it could be adjudged to be unreasonable or justifying compensation. I dismiss this item of the claim.

The evidence shows that the tenant was provided a rental unit without a working bathtub or shower. The tub/shower is inarguably an essential facility in this rental unit. By failing to ensure that facility the landlord has breached the *RTA*. The tenant testifies that he was forced to impose on friends to shower about twice a week.

In my view this shows a serious loss of a basis amenity. I award the tenant the amount of \$1500.00 for the four months he has and will have to occupy the premises without a working shower/tub.

Conclusion

The tenant's application to cancel the ten day Notice is dismissed.

The tenant's application for compensation is allowed in part in the amount of \$1500.00.

The landlord's application for an order of possession is allowed. There will be an order of possession effective January 31, 2016.

The landlord's application for a monetary award, as amended, is allowed at \$2250.00, leaving a balance of \$750.00 after the tenant's award is offset.

In the circumstances of this case I make no provision for recovery of any filing fee.

I authorize the landlord to retain the \$375.00 security deposit in reduction of the balance of the amount awarded.

The landlord will have a monetary order against the tenant for the remainder of \$375.00.

This decision was rendered orally at the hearing 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: January 13, 2016

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Residential Tenancy Branch

