



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes CNC, OLC, RR, CNR, MNR

### Introduction

This matter dealt with two separate applications by the tenant. The first one seeks to cancel a Notice to End Tenancy for cause, seeks an Order for the landlord to comply with the Residential Tenancy Act (Act), regulation or tenancy agreement and to reduce his rent for repairs, services or facilities agreed upon but not provided. The second application seeks to cancel a 10 Day Notice for unpaid rent, seeks to recover costs for emergency repairs and again seeks to reduce his rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents was done in accordance with section 89 of the *Act*, one was hand delivered to the landlord on December 23, 2010 and one was sent by registered mail on January 08, 2011. The landlord confirms receipt of both hearing packages.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the tenant entitled to reduce his rent for repairs, services or facilities agreed upon but not provided?
- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to recover the cost of emergency repairs?

## Background and Evidence

The documentary evidence provided by the landlords show that this month to month tenancy started on February 01, 2006. Rent for this unit is \$550.00 per month and is due on the first of each month. The tenant paid a security deposit of \$275.00 on February 01, 2006.

The landlord states the tenant was served a One Month Notice to End Tenancy for cause on December 13, 2010. This gave an effective date of January 14, 2011 and had the following six reasons listed to end the tenancy.

The tenant or a person permitted on the property by the tenant has:

1. significantly interfered with or unreasonable disturbed another occupant or the landlord
2. Seriously jeopardized the health, safety or lawful right of another occupant or the landlord
3. Put the landlords property at significant risk

The tenant has engaged in an illegal activity that has, or is likely to:

1. Damage the landlord property
2. Adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord
3. Jeopardized a lawful right or interest of another occupant or the landlord

The landlord states that due to the tenants behaviour other tenants have made numerous complaints against him and they are fearful and feel threatened by him. The landlord states the police have been called out to this tenant on at least 10 occasions in the last two years and he has provided file numbers for these incidents.

The landlord states that on one occasion the police dropped this tenant off outside the building and the tenant entered another tenants unit, walked through it to get to his unit as he did not want the police to know where he lived. The landlord states the tenant threatened to drive a car through this tenants unit.

The landlord testifies that he has received complaints about the tenant concerning constant noise, partying, drinking and fighting and acting in an intoxicated manner in the hallways. The

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landlord states two tenants have written letters (provided in evidence) concerning this tenants behaviour but they wish to remain anonymous due to fear of this tenant.

The landlord states his maintenance man lives in the building and put up his own security camera outside his door. He states the tenants told him to take this down, which he did, and states the tenant sanded his peephole in his door. The landlord also claims the tenant has changed the lock to his unit door and the landlord is unable to access the tenants unit in an emergency. He states if there was a fire this would potential put the other nine units at risk.

The landlord testifies that the tenant uses marijuana and has smelt this coming from his unit. He states there is also domestic violence that takes place because the tenant allows his girlfriend to visit his unit when she has a restraining order against her. These visits often become explosive as they fight and argue and this causes undue distress and fear to other tenants.

The tenant denies the landlords claims. He states he calls the police himself to take him to the hospital and on one occasion he called the police to remove his girlfriend from the building. The tenant states he did have a temporary restraining Order on his girlfriend but this was lifted after three days. He states they do get into arguments but no violence takes place. The tenant states he has offered the landlord a key to his unit but the landlord wants him to spend \$60.00 to get a master key cut.

The tenant testifies that it is the landlord's negligence in maintaining the building that is causing damage not the actions of the tenant. The tenant states he does not frighten threaten or intimidate the other tenants. He states on the occasion he entered the other tenants unit he did so after he realized he had left his keys in his unit and asked that tenant's son if he could walk through her unit to access his unit. He states the tenants' son gave him permission to do so.

The tenant testifies that he does not make a lot of noise and does not own a stereo system just an old television set. He states he does have a drink and will walk through the building on his way to the liquor store when he has been drinking but does not cause problems to other

tenants. The tenant states he is not the only person in the building who smokes marijuana and if the landlord can smell it, it does not necessarily mean it is coming from his unit.

The tenant states he does intend to move from the building but seeks to have the Notice cancelled as he does not want these sorts of allegations on his record.

The tenant testifies that the landlord has failed to repair his unit. He states he has lived there for six years and the landlord has not painted his unit during that time, he has had to live with a broken window for two years and the carpet is approximately 11 to 15 years old and needs replacing. He states there is a leak from the leaky roof which has caused black mould which affects the tenants' health. The tenant states he had an agreement with the landlord that he, the tenant, would buy paint and new carpet and underlay and get the work done himself then deduct this cost from his rent. He states he bought paint, painting equipment, carpets and underlay at a cost of \$290.00 and had a man lined up to do the work but the landlord served him with an eviction Notice instead.

The landlord states he did not have an agreement with the tenant to buy painting supplies or carpet and have work done in his unit, nor did he have an agreement that the tenant could deduct this from his rent. The landlord states he has a maintenance man living in the building to do work on the units and would not pay for someone else to do the work. The landlord states the tenant has never informed him that any work is required in his unit and states he was informed about the broken window from another tenant and has repeatedly asked the tenant to have this repaired as the tenant has told him different stories about how it became broken.

The landlord states he has had the roof repaired and patched many times but can't afford at this time to have the whole roof replaced. He states the tenant had changed his locks and is reluctant to let anyone into his unit to determine what, if any, repairs are required.

The landlord testifies that the tenant did not pay his rent for January, 2011 and he was served in person with a 10 Day Notice to End Tenancy on January 02, 2011. This Notice had an effective date of January 11, 2010 due to \$248.39 in unpaid rent. The landlord states the tenant owes all

the rent for January but he would have accepted half the months' rent if the tenant had moved out on January 11, 2010.

The tenant does not dispute that he owes rent for January, 2011.

The tenant seeks costs for emergency repairs but agrees that he has not made any emergency repairs to the unit.

The landlords' request an Order of Possession based on the One Month Notice or the 10 Day Notice to take effect on February 01, 2011.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants application to cancel the One Month Notice to End Tenancy for cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has only provided two unsigned letter from anonymous tenants and no witnesses to corroborate his testimony as to the reasons given to end the tenancy. Therefore In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy based on the one month notice and as a result, the Notice is cancelled.

With regard to the tenants application to cancel the 10 Day Notice to End Tenancy; s. 26 of the Act states: *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.* Both parties agree that rent is due on the first day of each month and the tenant agrees that he has not paid rent for January,



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2011. The tenant has not shown that he has a right to deduct rent for emergency repairs or any other reasons under the *Act*.

The tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served in person to the tenant on January 02, 2011 the effective date of the Notice has been amended to January 12, 2011 pursuant to s. 53 of the *Act*. As the tenant agrees he did not pay rent for January, 2011 the Notice is upheld and the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, When the tenant feels repairs are required in his rental unit he must inform the landlord in writing and must not take it upon himself to do the repairs unless he has an agreement in writing from the landlord. The burden of proof falls to the claimant to show that the landlord has not complied with s. 32 of the *Act* in not maintaining the rental unit. It is my decision that the tenant has not met the burden of proof in this matter and this section of his application is dismissed.

The tenant states he had an agreement with the landlord to make emergency repairs to his unit but has failed to show any evidence that emergency repairs are required or that the tenant has completed any emergency repairs in accordance with s. 33 of the *Act*. Consequently, this section of the tenants' application is also dismissed.

With regard to the tenants' application to reduce his rent for repairs, services or facilities agreed upon but not provided. The tenant seeks to recover the sum of \$290.00 he paid for paint and painting supplies. However, as stated above he has not shown that the landlord agreed he could carry out this work in his unit and consequently this section of his application is also dismissed.



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## Conclusion

The tenant's application to cancel the One Month Notice to End Tenancy for cause is allowed. Therefore, the one Month Notice dated December 13, 2010 is cancelled.

The Tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent is dismissed. The 10 Day Notice dated January 02, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on or before February 01, 2011. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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: January 13, 2011.

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