



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** OPR, MNR, FF

## **Introduction**

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent, and recovery of the filing fee for this application. Both parties participated in the hearing and each gave affirmed testimony.

## **Issues to be Decided**

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

## **Background and Evidence**

The month-to-month tenancy began on or around October 20, 2008. At the outset of tenancy the tenant paid a pro-rated amount of rent to October 31, 2008. Thereafter, rent in the amount of \$530.00 was payable in advance on the first day of each month. At the outset of tenancy the tenant also paid a security deposit of \$265.00.

On November 1, 2008 the tenant failed to pay all rent due for November. The landlord submitted into evidence a copy of the 10 day notice to end tenancy for unpaid rent which is dated December 5, 2008. A copy of the second page of the notice submitted into evidence by the landlord shows that the tenant owes rent in the amount of \$530.00 which was due on November 1, 2008. The parties agree that the landlord personally served this notice on the tenant at her place of work on December 5, 2008. The parties further agree as follows, that

- all rent due for November 2008 has now been paid;

- all rent due from December 1 – 15, 2008 has now been paid;
- the security deposit of \$265.00 has been applied against all rent paid up to December 15, 2008.
- rent is overdue for December 16 – 31, 2008 and all of January 2009.

There was no additional consensus between the parties and details further to the above are either unclear or incomplete. For example, the landlord testified that she served two separate 10 day notices for unpaid rent to the tenant, and that she may have mistakenly submitted into evidence a copy of the second page of the first notice (showing rent overdue at November 1, 2008), versus submitting a copy of the second page of the second notice (dated December 5, 2008 and showing rent overdue at December 1, 2008.) During the hearing the tenant was either unable or unwilling to confirm the rent due date shown on her copy of page two of the 10 day notice dated December 5, 2008.

Further, it appears there was agreement reached between the parties whereby the landlord was prepared to accept partial payment of rent at mid-month, as opposed to requiring full payment of all rent due on the first of the month. The landlord testified that this agreement was time limited, whereas the tenant testified her understanding was that the agreement would apply to all future payment of rent. It is unclear at what point in time the parties agreed to apply the security deposit against the outstanding rent, or at what points in time the tenant made additional payment(s) toward the rent and in what amount(s).

### **Analysis**

Based on the documentary evidence and testimony of the parties, I am satisfied that the tenant was served with at least one 10 day notice to end tenancy for unpaid rent.

However, it appears the landlord may have mistakenly submitted a copy of the wrong page two of the 10 day notice dated December 5, 2008, and in view of the unclear and incomplete testimony concerning timing and amount(s) of rental payment(s), I am unable to determine when and in what amount(s) rental payment(s) took place.

Further, I cannot be certain that the landlord did indeed issue two separate 10 day notices, whether the tenant paid all rent due within 5 days after she received the 10 day notice dated December 5, 2008, whether the landlord's error may simply have been in the date shown on page two of the notice issued December 5, 2008, and / or whether the landlord effectively cancelled one (or both) notice(s) by agreeing to accept partial payment(s) of rent from the tenant.

As the evidence is at best insufficient, I am therefore unable to issue an order of possession or a monetary order in favour of the landlord. Neither am I able to grant the landlord recovery of the filing fee for this application.

Should the parties fail to reach a settlement between them in regard to the rent currently outstanding, the landlord may choose to serve the tenant with a new 10 day notice to end tenancy for unpaid rent, and subsequently reapply for dispute resolution to obtain an order of possession and a monetary order.

### **Conclusion**

Pursuant to all of the above information, I hereby dismiss the landlord's application.

DATE: January 22, 2009

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Dispute Resolution Officer