



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so, how much?
3. Is the Landlord entitled to compensation for damages and if so, how much?

### Background and Evidence

This tenancy started approximately 5 years ago. Rent is \$477.50 per month payable on the 1<sup>st</sup> day of each month. The Landlord said the Tenants had rent arrears from March, 2009 and did not pay April, 2009 rent when it was due and as a result, he posted a 10 Day Notice to End Tenancy for Unpaid Rent on their door on April 7, 2009. The Landlord said the Tenants paid the arrears by way of a payment of \$495.05 on April 15, 2009 and \$244.70 on April 24, 2009 for which they were given receipts that stated “for use and occupancy only.”

The Tenants argued that only \$477.50 of the rent arrears shown on the Notice was for rent and the balance was charged to them by the Landlord for garbage removal. The Landlord admitted that it was possible that part of the \$739.75 shown on the Notice was for garbage removal, however, he did not have a statement of account available to verify that information.

### Analysis

Section 1 of the Act defines “rent” as money paid or agreed to be paid by or on behalf of a Tenant to a Landlord in return for the right to possess a rental unit or common areas but does not include a security deposit, pet deposit or fee prescribed under the Regulations to the Act. I find that an amount charged for garbage removal is not rent as defined by the Act.



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I also find that there is only enough evidence to conclude that \$477.50 of the amount shown on the Notice was for rent. Section 46(4) of the Act states a Tenant may pay rent arrears **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, and thereby cancel the Notice. The Tenants are deemed under s. 90 of the Act to have received the Notice 3 days after it was posted or on April 10, 2009. Consequently, the Tenants had until April 15, 2009 to pay the rent arrears. I find that the Tenants made a payment of \$495.05 on April 15, 2009 which thereby cancelled the Notice.

The Landlord confirmed that there were no rent arrears and as a result, his application for an Order of Possession and a Monetary Order is dismissed.

## Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated April 6, 2009 is cancelled and the tenancy will continue. The Landlord's application is dismissed. 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: May 13, 2009.

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Dispute Resolution Officer