



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes – CNC, MT, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order due to unpaid rent. The tenant applied to cancel the notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing, the tenant confirmed he had received an updated 10 Day Notice to End Tenancy for Unpaid Rent, as submitted by the landlord. As a result the tenant's application was amended to include disputing the updated 10 Day Notice.

As well, during the hearing the landlord indicated the tenant had not paid any rent for the month of February 2010. The tenant testified that he hadn't paid rent because the landlord did not come to get and since then they have used that money to secure alternate accommodation effective February 20, 2010. The landlord's application was amended to include the additional full month rent for February, 2010.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be determine if the tenant is entitled to cancel a Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on July 15, 2007 for a 1 year fixed term tenancy beginning on August 1, 2007 that converted to month to month tenancy beginning on August 1, 2008 for the

monthly rent of \$1,150.00 due on the 1<sup>st</sup> day of the month and a security deposit of \$575.00 was paid;

- A copy of old version 10 Day Notice to End Tenancy for unpaid rent dated October 1, 2009 with an effective vacancy date of October 8, 2009 for unpaid rent in the amount of \$2,730.00;
- A receipt from the landlord in the amount of \$600.00 for partial rent for dated January 1, 2010;
- A copy of old version 10 Day Notice to End Tenancy for unpaid rent dated January 1, 2010 with an effective vacancy date of January 8, 2010 for unpaid rent in the amount of \$3,380.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 11, 2010 with an effective vacancy date of January 21, 2010 due to \$3,380.00 unpaid rent;
- A handwritten account ledger detailing the payments made on the tenant's account;
- Several handwritten notes from the tenant stating "will give more when I can", "will pay more on the 16<sup>th</sup> of January", "next payday on the 16 I will give you more money"

The tenant submitted a copy of old version 10 Day Notice to End Tenancy for unpaid rent dated January 1, 2010 with an effective vacancy date of January 8, 2010 for unpaid rent in the amount of \$3,380.00.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed any month since July 2008 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on January 11, 2010.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did apply to dispute the Notice to End Tenancy within five days.

The landlord testified that he had been trying to get the tenant to pay full rent since July 2008 and that they are always seemed to issues come up or agreements made that the tenant didn't follow up on. The landlord stated he provided the tenant with a notice to end the tenancy in October 2009 and that the tenant had agreed to make payments but has failed to do so.

The tenant testified that he didn't believe that he owed the tenant anything. When questioned regarding what he did when he received the notice he indicated that he thought he could work it out with the landlord but he never discussed it with the landlord.

### Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is

deemed to have been received by the tenant on January 11, 2010 and the effective date of the notice is January 21, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the landlord has provided sufficient evidence to show the tenant owes the claimed amount and the tenant has failed to provide sufficient evidence to warrant cancelling the notice. I therefore dismiss the tenant's application in its entirety.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,580.00** comprised of \$4,530.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$587.71 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,992.29**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 17, 2010.

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Dispute Resolution Officer