



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, OPC, CNR, CNC, MNR, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

In his Application, the Landlord requested an order of possession based on unpaid rent and for cause, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

In his Application, the Tenant applied to cancel the 10 day Notice to End Tenancy for unpaid rent and the Notice to End Tenancy for cause.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Does the Tenant have sufficient evidence to cancel the 10 day Notice to End Tenancy for unpaid rent and the Notice to End Tenancy for cause?

### Background and Evidence

The Landlord claims the Tenant failed to pay rent for June, July and August of 2010. He claims the Tenant last paid rent in June, however, that payment was for the month of May in 2010.

The monthly rent is \$425.00 payable on the first of the month and the Landlord received a security deposit of \$212.50 at the start of the tenancy, some two years ago. Neither party provided evidence on the exact date the security deposit was paid.

The Landlord testified that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on July 12, 2010, by personal service.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant applied to cancel the Notice although he testified during the hearing that he had not paid rent for July or August of 2010. He disputes the payment made in June went to the May rent, and says June rent has been paid in June.

The Tenant alleges the Landlord has threatened and harassed him and his friends. The Tenant called the police on July 12, 2010, when the Landlord was at the door of the rental unit. The Tenant alleges the Landlord hit him on the head with a ruler.

The Tenant further alleges that there is work that is required on the rental unit, such as the toilet flushing mechanism, outside eavestrough and a light in the living room.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

By his own testimony the Tenant admits he has not paid outstanding rent for July and August and therefore, the 10 day Notice to End Tenancy served in July is valid and enforceable. I dismiss his Application to cancel the Notice for unpaid rent.

Therefore, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. August 15, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

While the Tenant may feel there is work required on the rental unit, section 26 of the Act requires him to pay rent regardless of any breach of the tenancy agreement or Act by the Landlord. The Tenant may not withhold rent, unless he has an order from a Dispute Resolution Officer allowing him to, or some other authority under the Act. The Tenant had no such order or authority.

As to the allegations regarding threats by the Landlord, I do not find that asking the Tenant to pay his rent is a threat. However, the Tenant has apparently involved the police in this matter regarding allegations of uttering other threats and the issue of being hit with a ruler, and therefore, it is best left to the police to investigate these allegations.

As to the Notice to End Tenancy for cause, it is unnecessary to make any findings as to this issue, as the tenancy is ending for unpaid rent. Therefore, I dismiss the Tenant's Application to cancel the Notice to End Tenancy for cause, and I dismiss the Landlord's Application for an order of possession based on cause.

I find that the Landlord has established a total monetary claim of **\$900.00** comprised of July and August 2010 rents and the \$50.00 fee paid by the Landlord for this application. The Landlord has leave to re-apply for the May and June rents, and other applicable monetary claims.

As neither party had sufficient evidence on the exact day the security deposit was paid, I allow that the security deposit was received on August 1, 2008, in order to calculate the interest on the \$212.50, and therefore, I order that the Landlord retain the deposit and interest of **\$213.83** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$686.17**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent for July and August of 2010, and the Landlord is entitled to an order of possession.

The issue of cause in both Applications is dismissed. The Tenant's allegations against the Landlord are apparently being investigated by the police.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due.

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: August 12, 2010.

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Dispute Resolution Officer