



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, MNDC, OPR, MNR, ET, FF, O,

### Introduction

This was the hearing of applications by the tenant and the landlord. The hearing was conducted by conference call. The tenant attended the hearing the landlord was represented by its two named representatives, however, the representative, D.D. attended only briefly to attest that the documents she submitted and the evidence contained therein was true. D.D. testified that she could not continue her attendance because she had to attend a mandatory real estate conference. The tenant said that she had been involved in a recent car accident; she claimed that the accident affected her ability to provide evidence and respond to the landlord's evidence during the hearing. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. She also requested a monetary order and other unspecified relief. The landlord applied for an order for possession for unpaid rent, for a monetary order and for an early end of tenancy.

### Issues(s) to be Decided

Is the landlord entitled to an order for possession?

Is the tenant entitled to a monetary order and if so in what amount?

Is the tenant entitled to some other remedy?

Is the landlord entitled to a monetary order and if so in what amount?

### Background and Evidence

The rental unit is a house in Surrey. The tenancy began on June 22, 2010 for a two year fixed term. Monthly rent was \$2,000.00. The tenant was responsible for payment of utilities. The tenant was required to pay a security deposit of \$1,000.00. The tenancy agreement provided that no pets were allowed.

The landlord's evidence, as set out in the documents submitted and the testimony of the landlord's representatives is that the tenant made a part payment of rent for the month of July, but her cheques in payment of the balance of July's rent, for her security deposit and for August rent could not be cashed because the tenant did not have funds in her account to cover the cheques. The landlord submitted a copy letter from his bank dated August 3, 2010 wherein the bank officer reported that: "I am sorry to say that I have called the issuing bank to verify funds and at this time funds are not available. At this time we cannot deposit these cheques

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated July 23, 2010. The Notice alleged that the tenant failed to pay rent for July in the amount of \$790.00. The tenant applied to dispute this Notice. The tenant alleged in her application that not only did she pay the \$790.00 claimed, but she paid the landlord a further \$790.00. and she requested a monetary order in that amount. The tenant claimed that the landlord has harassed her and made numerous visits and vexatious inspections of the rental unit,

According to the tenant's documents the further \$790.00 payment was a cheque drawn on the same bank account as the initial \$790.00 and dated July 26, 2010.

The landlord's representative testified that the owner of the property hired the property management company named as landlord to represent him after the tenant accused him of inappropriate conduct towards her.

The tenant said that she has paid all rent due and the problem is not of her making; all of her cheques are "good" but have not been honoured because, the third party property manager tried to cash them contrary to the policies of her bank. The tenant said in her

evidence and documents that the allegations of her former that she did not pay rent or security deposit and went to the Supreme Court before the former landlord finally obtained a writ of possession from the Supreme Court were false and that her former landlord: "was a bad alcoholic landlord that I had previous."

The tenant set out in several written statements a list of accusations about her landlord and the property management company he hired to represent him.

#### Analysis and conclusion

I listened to the tenant's testimony and her explanation as to why her rent cheques were not processed and cashed. I listened to her complaints about her landlord's actions and the conduct of the property management company and its representatives. I found the tenant's evidence to be contrived and unconvincing. I accept the evidence of the landlord and the documentary evidence from his bank in preference to the tenant's evidence. The tenant made many statements about the reasons why her cheques had not been cashed and about her bank's practices, but she produced no documentary evidence to substantiate any of her oral testimony. I do not believe the tenant's accusations about the conduct of her landlord and his representatives of the property management firm he hired to deal with the tenant.

I find that the tenant failed to pay the full amount of rent due for the month of July, leaving an unpaid balance of \$790.00 and I find that her cheques for subsequent months could not be cashed because adequate funds were not available to cover them.

I find that there is no basis to cancel the Notice to End Tenancy for unpaid rent dated July 23, 2010 and that there is no basis for the tenant's claim to a monetary order in the amount of \$790.00 or in any other amount. The tenant's application is dismissed without leave to reapply.

The landlord requested an early end of tenancy and a monetary order in the amount of \$2,000.00. The *Residential Tenancy Act* by section 56 permits a landlord to request an order ending a tenancy sooner than it would end if the landlord were to give the tenant a one month Notice to End Tenancy for cause. Such order are granted where it would be unreasonable or unfair to the landlord or other occupants to wait for a Notice to End Tenancy to take effect. I do not find that the tenant's conduct, particularly her failure to pay rent provides sufficient grounds to justify granting the landlord's application for an early end to tenancy. I dismiss the landlord's request for an early end of tenancy.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
  - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. Pursuant to section 55 I grant the landlord an order for possession effective September 17, 2010 after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

With respect to the landlord's request for a monetary order, I have found that there is unpaid rent from July in the amount of \$790.00 and that no rent was paid for August or September for a total amount of unpaid rent of \$4,790.00. The landlord has claimed a monetary order in the amount of \$2,000.00 and requested recovery of the \$50.00 filing fee. On the evidence I find that the landlord is entitled to a monetary order in the

amount of \$2,050.00 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claim Court and enforced as an order of that court.