



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, FF, O, MNDC, MNR, MNSD, OPB, OPR

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request to have a Notice to End Tenancy cancelled and a request that the landlords bear the \$50.00 cost of the filing fee that he paid for dispute resolution.

The landlord's application is a request for an Order of Possession based on a 10 day, Notice to End Tenancy, and based on a Mutual Agreement to end tenancy. The landlords are also requesting a monetary order of \$4500.00 and request that the respondent bear the \$50.00 cost of the filing fee that was paid for dispute resolution. The landlord's further request that they be allowed to keep the full security deposit towards this claim.

### Background and Evidence

On August 12, 2010 the tenant was served with a 10 day Notice to End Tenancy for non-payment of rent in the amount of \$1500.00.

The landlords testified that:

- They had agreed to a modified rent payment plan with the tenant, in which the tenant was to pay \$500.00 on the first of the month, and \$500.00 on the 15th of the month.
- When the Notice to End Tenancy was given on August 12, 2010, the tenant had not paid \$500.00 of the July 2010 rent, and had not made the \$500.00 August 1, 2010 payment.
- They therefore gave the tenant a Notice to End Tenancy for non-payment of rent and included the full August 2010 rent, as they were concerned that they may not receive that either.
- That concern turned out to be justified, because to date they have received no rent since serving that the notice.

The landlords are therefore requesting an Order of Possession for as soon as possible and a monetary order as follows:

July 2010 rent outstanding	\$500.00
September 2010 rent outstanding	\$1000.00
October 2010 rent outstanding	\$1000.00
Possible loss of November 2010 rent	\$1000.00
Filing fee	\$50.00
Total	\$4550.00

The landlords further request it be ordered that they be allowed to keep the full security deposit of \$500.00 towards this claim and that a monetary order for \$4050.00 be issued.

The tenant testified that:

- They did agree to a modified payment plan however the agreement was not that payments would be made on the 1st and 15th of the month, the agreement was that payments would be made every two weeks when the tenant received his unemployment cheque.

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- He has stuck to that payment plan except that, when his unemployment benefits ran out he had to reapply and there was a two week delay in receiving those benefits.
- He informed the landlords that his benefits were delayed and that they would be paid when he was paid.
- He has since been paid and two days ago he deposited the full outstanding rent into the landlords account, less the \$500.00 security deposit held by the landlords.
- Therefore since he was sticking to the agreement and paying the landlords when he got paid he feels this notice should be cancelled.

## Analysis

It is my decision that I will not set the 10 day Notice to End Tenancy.

I accept the landlords claim that they agreed to accept rent in two payments, one \$500.00 payment on the 1st of each month, and one \$500.00 payment on the 15th of each month.

Therefore it is my finding that when the notice was given the tenant was \$1000.00 behind in his rental payments, and since the tenant did not pay that rent within the five day grace period, this tenancy ends pursuant to that notice.

Therefore the landlords do have the right to an Order of Possession.

Also my decision that I will allow a portion of the landlords monetary claim as follows:

July 2010 rent outstanding	\$500.00
September 2010 rent outstanding	\$1000.00
October 2010 rent to the 15th	\$500.00
Filing fee	\$50.00
Total	\$3050.00



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I am not willing to order any rent past October 15, 2010 at this time because the landlords are required to attempt to re-rent the unit and mitigate their loss. Therefore the claims for rent past October 15, 2010 are dismissed with leave to reapply.

The tenant claims to have deposited rent into the landlords account 2 days ago however he has supplied no evidence to support that claim and therefore I will not deduct any amount from the order; however if the landlords subsequently find that the tenant has made payments into their account, those payments will be considered payment towards satisfaction of my order.

## Conclusion

### Landlords application

I have issued an Order of Possession for 12:00 noon on October 3, 2010.

I have also allowed \$3050.00 of the landlord's monetary claim. The landlords may therefore retain the full security deposit of \$500.00 and I have issued a monetary order for \$2550.00.

### Tenant's application

The tenant's application is dismissed in full without leave to reapply.

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: October 01, 2010.

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Dispute Resolution Officer