



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the tenant – MT, CNR, AAT

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the 10 Day Notice for unpaid rent and seeks an Order for the landlord to allow access to the rental unit for the tenant and the tenants' guests. I find the tenants application for more time to cancel the 10 Day Notice is not required as the tenant has applied to cancel the valid 10 Day Notice on the same day it was served.

The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent. The landlord also seeks an Order to keep the tenants security deposit and to recover the filing fee.

The tenant served the landlord in person on September 09, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant in person on September 20, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Issues(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to allow the tenant and his guest's access to the rental unit?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

## Background and Evidence

Both Parties agree that this tenancy started on August 01, 2010. The tenants' monthly rent for his room is \$550.00 which is due on the first of each month. This is a month to month tenancy. No written tenancy agreement is in place. The landlords state the tenant paid a security deposit of \$275.00 on August 01, 2010. The tenant states the payment made on August 01, 2010 was his rent payment for August not his security deposit and partial rent payment.

The landlord testifies that the tenant paid his first month's rent by cheque. Of this sum of \$525.00, \$275.00 was allocated as the tenants' security deposit and \$250.00 was allocated to August's rent. This left a balance of rent owing for August of \$300.00. The landlord has provided a receipt showing these details.

The landlord testifies the tenant did not pay the outstanding rent and did not pay rent for September, 2010. A 10 Day Notice was served to the tenant on September 01, 2010. The landlord withdrew this Notice as it had been served on the day rent was due and therefore invalid. The landlord testifies that the tenant was served with another 10 Day Notice on September 09, 2010 which states the balance of outstanding rent is \$850.00. The tenant has five days to pay this rent or dispute the Notice.



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord states the tenant has not paid rent for October, 2010 of \$550.00. The landlord seeks an Order of Possession and a Monetary Order to recover the sum of \$1,400.00. The landlord seeks to apply the security deposit she claims the tenant has paid against the outstanding rent.

The tenant disputes the landlords' claims. The tenant has provided a copy of his rent receipt and states the landlords rent receipt has been altered and the rent breakdown has been added after he was given his copy. The tenant states he did not pay his security deposit and agrees that the landlord did request that he pays the sum of \$275.00. The tenant states he paid \$525.00 for his rent for August and owed \$25.00 towards this rent which he attempted to pay to the landlords' agent with his September rent on September 01, 2010. The tenant states the landlords agent refused to accept his rent without payment of the security deposit. The tenant states he told the landlords' agent that he would need more time to raise the money for his security deposit. The tenant states he filed his application to dispute the 10 Day Notice on September 09, 2010. The tenant states he attempted to pay his rent for October, 2010 but the landlords agent refused to accept this also.

The tenant states he returned to his room on August 13, 2010 and he found the landlords agent and a handyman changing the locks to his room. He states he told the landlords agent that he was not allowed to do this as it was illegal to lock a tenant out of his room. He states the handyman returned and changed the locks back again.

The landlord states the tenant was supposed to provide two references pay his security deposit and his first month's rent before he moved into the rental unit. She states she asked the tenant on three occasions for references. The landlord testifies that they agreed that if the tenant could not do these things he would leave the rental unit by August 08, 2010 and signed a note in agreement to this. The landlord agrees that the rent receipt was altered but only to reflect the oral agreement between the tenant and landlord. The landlord states they would not accept the tenants rent as he had been told they needed references and his security deposit.



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant states he only signed the note about ending his tenancy as he has a bar under his rental unit which becomes very noisy at night preventing the tenant from sleeping, so he signed this note with the landlord in the event he could not stay due to the noise. The tenant states he did not give the landlord his references as the manager has known him for many years and he moved from another of the landlords' rental rooms in a different hotel which was closing down.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlords receipt and the tenants receipt for Augusts rent payment are different. The landlord agreed that they had altered the receipt to show a breakdown of how the payment was allocated. The tenant disputes he has paid a security deposit and states he only owed rent of \$25.00 for August which he attempted to pay on September 01, 2010. When a receipt has been altered by a landlord it puts the credibility of the landlords' evidence regarding the receipt into question. Therefore, I find I will not accept the evidence presented by the landlord in the form of this receipt and find the tenant paid rent only of \$525.00 for August, 2010.

As the landlord refused to accept the tenants rent for September 01 and October 01, 2010 I find the 10 Day Notice issued on September 09, 2010 is cancelled and the tenancy may continue.

I refer both parties to Section 17 of the Act which states: a landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement. The Residential Tenancy Policy Guidelines # 17 states a landlord may issue and serve on the tenant a Notice to End a Residential Tenancy if the tenant fails to pay the required security deposit within 30 days of the date it is required to be paid by the tenancy agreement.

However, the landlord did not provide the tenant with a tenancy agreement and only a verbal agreement is in place between the parties. Both parties do agree that a security deposit was asked for at the start of the tenancy. Therefore, I find the landlord should have issued a One



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

Month Notice to End Tenancy after a tenancy agreement has been signed by both Parties not the 10 Day Notice that was served.

With regard to the tenants' claim that the landlord attempted to lock him out of his room, I find as the locks have been changed back and the tenant continues to have access to his room that no Order is required at this time. I would caution the landlord to ensure the tenant has access to his room at all times unless an Order of Possession has been issued and enforced.

As the tenant states he has not paid his rent because the landlord would not accept it and the landlord agrees they would not accept it, I am not willing to issue the landlord with a Monetary Order for unpaid rent. However, I Order the tenant to pay the outstanding rent of \$1,400.00 within seven days of receiving this decision.

## Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated September 09, 2010 is cancelled and the tenancy will continue.

The landlords' application for an Order of Possession is dismissed without leave to reapply.

The landlords' application to keep the security deposit is dismissed with leave to reapply.

The landlords' application for a Monetary Order is dismissed with leave to reapply in the event the tenant does not pay the outstanding rent of \$1,400.00.

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 19, 2010.

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Dispute Resolution Officer