



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, MNSD, O

### Introduction

Some documentary 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 is a request for an order cancelling a section 47 Notice to End Tenancy, and a request for an order for the return of a security deposit overpayment of \$350.00.

### Background and Evidence

The landlord testified that:

- The tenants rent has been repeatedly late.
- July 2010 rent was 47 days late before being paid in full.
- August 2010 rent was 30 days late before being paid in full.
- October 2010 rent was four days late.
- And now November 2010 rent was eight days late.

The applicant is therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- he does not deny that rent has been late in the past, however on October 20 he made arrangements with his bank to have the rent transferred to the landlord's bank on the 30th of the month, and therefore he does not believe it is his fault that the rent did not arrive until the fourth.
- He has supplied a letter from the bank which states that it takes a few days for money to show up in the other person's account when it's transferred.

The tenant therefore does not believe that this tenancy should end, as the money came out of his account on the last day of the month.

The tenant also testified that:

- The landlord collected the equivalent of a full month's rent as a security deposit instead of one half a month's rent and therefore he wants an order for return of one half of the amount of the security deposit.

## Analysis

### Security deposit

The Residential Tenancy Act only allows a landlord to collect the equivalent of one half a month's rent as a security deposit, and therefore the tenant does have the right to the return of \$350.00.

### Notice to End Tenancy

It is the tenant's responsibility to ensure that the rent is paid on the first of the month, and in this case the tenant has admitted that there have been numerous occasions where it has not been paid in full on the first of the month.



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The tenant has argued that, it is a delay in the transfer of funds from his bank to the landlord's bank that resulted in two of the four late payments and therefore he should not be penalized; however as I stated earlier, it is the tenants responsibility to ensure that the rent is paid to the landlord on the first of the month and if the bank does not deposit the funds into the landlords account on the first of the month, then the rent is considered late.

Therefore it is my decision that the landlord does have the right to end this tenancy for repeated late rent payments and I will not set the Notice to End Tenancy aside.

## Conclusion

I have issued an order for the landlord to pay \$350.00 to the tenant.

I dismiss the tenants request to cancel the Notice to End Tenancy and have issued an Order of Possession to the landlord for 1:00 p.m. on November 30th, 2010.

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: November 17, 2010.

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Dispute Resolution Officer