



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, FF  
Tenant: CNR, CNC

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for an order of possession for unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit, and to recover the filing fee for the Application.

The Tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause.

The Landlord's Agents and the Tenant and her witness 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.

### Issue(s) to be Decided

Is there a basis to cancel the Notices to End Tenancy for Unpaid Rent and For Cause?

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

### Background and Evidence

The tenancy began on May 1, 2004, now on a month to month basis, rent is \$954.00 per month, payable on the first day of each month and the Tenant paid a security deposit of \$397.50 on March 23, 2004.

Pursuant to the rules of procedure for the Act, the Landlord's Agent proceeded first in the hearing and testified as to why the Tenant had been served a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord's Agent testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent, (the "Notice"), in person and by registered mail, on November 4, 2010, and a 1 Month Notice to End Tenancy, on November 5, 2010, in person and by registered mail.

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. I note the effective date indicated on the Notice is November 16, 2010. I also note that there was no need to proceed on the 1 Month Notice to End Tenancy for Cause with the issuance of the 10 Day Notice.

The Landlord's Agent testified that the Tenant has not paid rent for the months of November and December and currently owes the outstanding rent for \$1,908.00. The Tenant presently occupies the rental unit.

The Tenant, in testifying in support of her application to cancel the Notice, stated that she has had difficulty in her employment situation and that she has always worked with the Landlord in getting her rent paid. The Tenant did not dispute the amount owed.

### Analysis

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

Under section 26 of the Act, a Tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a Tenant fails to pay rent when due, the Landlord may serve the Tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the Tenant must pay the outstanding rent or dispute the Notice within five days. The Tenant stated she filed to dispute within the five days, but the evidence does not support this allegation. However, even if the dispute was timely filed, the Tenant must be able to show that she does not owe the Landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I am satisfied that the Tenant owed the Landlord rent when the Notice was issued, that she did not pay all or any of the rent owed to the Landlord within five days of receiving the Notice and the Tenant did not establish that she had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the Tenant's failure to pay rent and the Landlord is entitled to regain possession of the rental unit. The Landlord is provided with an Order of Possession effective **7 days** after service on the Tenant.

This order may be filed in the Supreme Court and enforced as an order of that Court.

I find the Landlord has established a total monetary claim of **\$1,958.00**, comprised of unpaid rent of \$1,908.00 for rent and the \$50.00 filing fee for the claim.

I order that the Landlord retain the deposit and interest of **\$411.57** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,546.43**.

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

Due to the above reasons, the Tenant's Application is **dismissed**.

#### Conclusion

The Landlord is granted an Order of Possession and a monetary order for the balance due of **\$1,546.43**.

The Tenant's Application is dismissed.

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: December 06, 2010.

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Dispute Resolution Officer