



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR

For the tenant – MT, CNR, MNDC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks an Order of Possession for unpaid rent and a Monetary Order to recover unpaid rent. The tenant seeks more time to cancel the 10 Day Notice, seeks to cancel the 10 Day Notice for unpaid rent, seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to recover his filing fee

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:

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the tenant allowed more time to cancel the Notice to End tenancy?
- If so is the tenant entitled to have the Notice to End tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

## Background and Evidence

Both Parties agree that this tenancy started on November 05, 2010. Rent is \$560.00 per month. The tenant states the landlord said he could pay on the 1<sup>st</sup> or the 5<sup>th</sup> of the month the landlord states rent is due on the 1<sup>st</sup> day of each month. The landlord has provided a copy of a rental application/lease which she agrees was not given to the tenant. This lease does not state on which day rent is due.

The landlord states the tenant did not pay rent for December 2010. The landlord states the tenant was served with a 10 Day Notice to End Tenancy on December, 03, 2010. This Notice was handed to the tenant and gave an effective date to end the tenancy as December 13, 2010 due to \$560.00 in unpaid rent. The landlord testifies that since that time the tenant has not paid any rent and now owes rent for January, 2011. She seeks to amend her application to include this. The total amount of outstanding rent is now \$1,120.00.

The landlord seeks a Monetary Order to recover the unpaid rent and an Order of possession to take effect as soon as possible.

The tenant testifies that he could not dispute the Notice within five days as he did not have the landlords' full name and address for the application as the landlord had never given him a copy of the lease agreement. The tenant states as soon as he got this information he filed his application to dispute the Notice.

The tenant agrees he owes rent to the landlord but claims this was withheld as the landlord did not provided the rental unit in a condition that was fit for rental. The tenant also states the landlord did not specify a day that he must pay his rent each month. The tenant states he has had no heating throughout his tenancy and has had to provide his own heaters. He states the landlord went out of the province two days after his tenancy started and he kept trying to contact her but had no response. The tenant states he spoke to the landlords' son about the heating and sent a letter to the landlord on November 24 concerning this and other issues. The tenant

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agrees that a repair man did come to the unit on November 25, 2010 but claims the heating still does not work in his unit.

The tenant testifies that the advertisement for the unit stated that internet and cable services were included. He states that he did not have cable or internet use until November 12, 2010. He agrees the landlords' son did lend him an internet stick for his computer but states the landlord did not provide what was included in his rent.

The tenant states he does not have adequate hot water to take a shower as it runs out after five minutes. He states he informed the landlord of this and was told there was no problem with the hot water system.

The tenant testifies that he was without power to his fridge, stove and some lights for two or three days. He claims he could not get hold of the landlord and lost food in his fridge to a value of approximately \$100.00.

The tenant seeks compensation from the landlord of \$440.00 which includes half a month's rent of \$280.00 for the loss of heat, cable, internet services and power; \$100.00 for loss of food in his fridge due to power outage, \$10.00 for long distance telephone charges to contact the landlord and \$50.00 for his filing fee for this application.

The landlord disputes the tenant's claims. The landlord states she could not provide a copy of the lease agreement to the tenant as she has been waiting to receive additional details from him such as his previous address details. Once she receives these she can provide him with a copy of the agreement.

The landlord states that at the start of the tenancy she told the tenant there were some repairs required in the unit which she would repair when she returned from her trip such as a damaged door. She also states she informed the tenant that his internet and cable service would be installed on November 12, 2010 and he would be required to be home on that day to allow

access to his unit. She states the tenant agreed to this and in the meantime her son lent the tenant an internet stick so he could access items from his computer.

The landlord's agent (her son) states that he went to see the tenant after he had received a complaint that he had no heat. He states he offered the tenant a heater but he refused this as he said he already had one. The landlords' agent states he could feel the heat coming from the tenants' unit. The landlord states a heating repair man came out the next day and repaired the Thermocouple and told her that the problem is now repaired. She also states he said there is no problem with the hot water tank. The landlord states if the tenants unit was so cold why did he walk around just wearing tee shirts.

The landlord testifies that the property has never had a problem with hot water usage and suggests the tenant uses all the hot water by leaving it running. She states no other people living in the house including another tenant have a problem with the hot water running out.

The landlords' agent testifies that he came home and noticed the power was out. He states he reset the breaker and the power was restored the same day. He states the tenant would only have been without power for a maximum of 10 hours and this would not have been long enough to spoil any food in his fridge.

The landlord states she did not receive phone calls to her phone while she was out of the province as she has caller identification and could see if the tenant had called her.

## Analysis

With regards to the tenants application for more time to cancel the Notice to End Tenancy; section 66 (3) of the Act states; *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.*

As the tenant was served the Notice on December 03, 2010 and the effective date of the Notice is December 13, 2010, the tenant did not file his application to cancel the Notice until December 15, 2010 two days past the effective date of the Notice. The tenant argues he could not file his application without the landlords' correct name or address however the tenant could have obtained the landlords name from her son and as the landlord lived at the property he would have had her address. Consequently, the tenants' application for more time to cancel the Notice is denied.

There is some argument as to which day in the month the tenants rent is due as the tenant moved into the rental unit on the 5<sup>th</sup> day of the month but paid rent for the whole of the month. The lease agreement provided by the landlord does not give a start date for the tenancy nor does it show what day of the month rent is due, however, as the tenant agrees that he has not paid his rent for two months I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

With regards to the landlords claim for unpaid rent; Section 26(1) of the *Act* states:

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find the tenant does not have a right to deduct or withhold his rent and find the landlord has established her claim for a Monetary Order for unpaid rent to the sum of \$560.00. I further find the landlord may amend her application to include unpaid rent for January, 2011 as the tenant continues to reside at the rental unit and would be aware that rent was due for

January, 2011 but failed to pay it. Consequently, the landlord is entitled to a Monetary Order for **\$1,120.00** pursuant to section 67 of the *Act*.

With regards to the tenants claim for a Monetary Order for compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has meet the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted any evidence to support his claim that he is without heating and the repair done did not resolve the issue. Even if the tenant was without heating he refused the landlords offer of heaters and therefore did not mitigate his loss in this matter. I find the tenant was aware that his internet and cable services would be installed on November 12, 2010 and was provided a temporary solution to this by the landlords son, The tenant has provided no evidence that his hot water is inadequate or that he was without power for three days which resulted in a loss of food in his fridge. The tenant has provided no evidence to support his claim



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that he incurred \$10.00 in long distance calls to the landlord. Consequently, the tenant has not met the burden of proof in this matter and his application is dismissed.

## Conclusion

The tenants' application is dismissed in its entirety without leave to reapply

The landlords' application is upheld. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect. I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,120.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: January 07, 2011.

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