



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

*OPR, MNDC, MNSD, CNR, FF.*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### **Issues to be decided: Landlord's Application**

- Is the landlord entitled to an order of possession for unpaid rent and a monetary order, or should the Notice be cancelled as requested by the tenant?

### **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started on February 1, 2011 with rent set at \$925.00 per month payable on the 1st day of each month and a security deposit of \$462.50 was paid.

The landlord testified that under the tenancy agreement the tenant owed \$925.00 rent

on February 1, 2011 and only paid a portion of the rent leaving \$455.00 in arrears. The landlord testified that when the tenant failed to pay the rent, a Ten-Day Notice to End Tenancy was issued on February 8, 2011, effective February 18, 2011. The landlord testified that the tenant did not pay the outstanding amount and did not file an application to dispute the Notice. The landlord is seeking a monetary order for arrears and an order of possession.

The tenant's testimony confirmed that the tenant did not pay all of the rent for February 2011 when it was due. The tenant testified that she was counting on the security deposit being paid by the ministry and when this was denied, she had no choice but to take the deposit out of her rent funds, leaving a deficit in the payment for February's rent. The tenant is requesting that the Ten-Day Notice be cancelled.

**Analysis:**

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent or utilities are in arrears.

I find that there is no dispute of the fact that the tenant owed arrears for one month rent that was due on February 1, 2011. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid within five days and only a portion was paid which I find did not reinstate the tenancy. I find that the Notice for unpaid rent was supported under the Act and section 46 of the Act was fully met. Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession.

In regards to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent when it was due and owes arrears of \$455.00. I find that the landlord is entitled to compensation of \$505.00 comprised of \$455.00 for rental arrears and the \$50.00 cost of this application.

Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

**Conclusion**

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 find that the landlord is entitled to \$505.00. I order that the landlord retain the tenant's \$462.50 security deposit in partial satisfaction of this claim leaving \$42.50 still owed to the landlord by the tenant and I hereby issue a monetary order for this amount. The landlord must serve this notice on the tenant and can enforce it through Small Claims Court.

The tenant's application is dismissed in its entirety, 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: February 2011.

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Residential Tenancy Branch