



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 28, 2011.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the Act, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The Landlord testified the parties entered into a verbal month to month tenancy agreement effective October 23, 2010. Rent is payable on the first of each month in the amount of \$800.00 and \$400.00 was paid by the Tenant for a security deposit on October 23, 2010.

The Landlord stated she thought she provided the *Residential Tenancy Branch* (RTB) a copy of a 10 Day Notice to End Tenancy for unpaid rent when she made her application for dispute resolution. A discussion followed where she confirmed she had submitted her evidence documents February 3, 2011, the week after filing her application for dispute resolution; however the evidence package does not have a copy of the 10 Day Notice.

### Analysis

The Landlord made an application for dispute resolution January 28, 2011 seeking an Order of Possession and a Monetary Order. The notes placed on her file January 28, 2011, when the application was accepted indicate the Landlord was advised to provide the RTB and Tenant with copies of the 10 Day Notice to End Tenancy, a copy of the tenancy agreement, and rent paid. It is further noted that the Landlord stated she would provide sufficient copies prior to the hearing. The Landlord was provided a copy of the hearing package which contains instructions on evidence and the deadlines to submit evidence, as well as the Notice of Hearing that was provided to the Landlord.

That being said, the Landlord had not submitted a copy of the 10 Day Notice to End Tenancy prior to the hearing. She did however provide, among other things, a copy of a draft tenancy agreement that was not signed by the parties, a typed itemized list of utility bills outstanding, copies of letters issued to the Tenant in January 2011, and copies of hand written letters received from the Tenant.

The 10 Day Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Landlord's claim, in particular when she is asking to have this tenancy ended and to obtain monetary compensation based on the issuance of the Notice.

The responsibility of proving a claim is on the person making the claim. As the Landlord failed to provide a copy of the Notice to End Tenancy, I find the Landlord has provided insufficient evidence to prove her claim. The Landlord was not successful with her claim; therefore she must bear the burden of the cost of filing her application.

Therefore, I dismiss the claim without leave to reapply. If a 10 Day Notice to End Tenancy was served to the Tenant, it is not cancelled.

### Conclusion

**I HEREBY DISMISS** the Landlord's claim, 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 21, 2011.

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Residential Tenancy Branch