



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR MNR 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, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenants. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord issued a valid 10 Day Notice to End Tenancy for unpaid rent?
3. 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

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective September 15, 2009 which switched to a month to month tenancy agreement after September 30, 2010. Rent is payable on the first of each month in the amount of \$1,950.00. The Tenants paid the security deposit of \$975.00 plus the pet deposit of \$975.00 in instalment payments which were paid in full by approximately November 30, 2010.

After some confusion the Landlord testified she personally served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent on March 2, 2001. She was making reference to rent payments made for February 2011 and stated that rent is always late. I asked the Landlord if she provided the Tenants with receipts for rent to which she replied "yes". I asked the Landlord to refer to her receipts so she could provide me testimony of when she was paid the March 2011 rent. She began by saying the Tenants paid her \$950.00 on April 1, 2011 and this paid March in full. I asked on several occasions when the Tenants paid the \$1,000.00 for March and she said each time that it was paid on the first of March 2011. I then asked the Landlord if a receipt was issued for the \$1,000.00 which she replied she would look through her notes.

The Tenant testified he paid the \$1,000.00 on March 1, 2011 and that he handed the cash payment to the Landlord's husband who was standing in the driveway. He told the Tenant that his wife was out and he would get the money to her. He has not received a receipt for this \$1,000.00 for March nor has he received a receipt for the April 2011 rent of \$1,950.00 which he has also paid in cash. He stated the \$1,000.00 was paid before he was issued the 10 Day Notice to End tenancy. As of today's date his rent is paid in full and he did not receive a receipt for the \$1,950.0 he paid for April 2011.

The Landlord's husband testified and confirmed the Tenant paid him \$1,000.00 in cash for March 2011 rent but he could not remember which date that was.

The Landlord confirmed the rent is paid in full however she still wished to proceed with her application. I explained that the 10 Day Notice was invalid because based on the testimony before me the Tenant's had paid the \$1,000.00 prior to the issuance of the 10 Day Notice and therefore the amount listed as being unpaid of \$1,950.00 is incorrect. After explaining this, the Landlord wanted to continue the hearing and change her testimony because when she made her application for dispute resolution they only owed her \$950.00 and that is all she is applying for.

### Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on March 2, 2011, with an effective date of March 11, 2011, for unpaid rent of \$1,950.00 which was due on March 1, 2011. The Landlord testified that this Notice was personally served to the Tenants on March 2, 2011.

I find that the 10 Day Notice issued by the Landlord does not meet the form and content requirements of section 52 Act as the Notice was issued March 2, 2011 demanding \$1,950.00 when the evidence supports the amount of unpaid rent was only \$950.00. The Landlord provided further contradictory testimony when she tried to justify the date the \$1,000.00 was paid, referring to her application for dispute resolution, and began to be bounce her testimony between February and March rent payments. Conducting a business without keeping accurate financial records and not issuing proper receipts when payments are received in cash creates a situation where the Landlord becomes the author of her own misfortune because without the accurate accounting records she cannot provide the evidence or testimony as required.

The evidence confirms the Landlord has accept payment of \$1,950.00 for April 2011 rent, after the effective date of the 10 Day Notice and without issuing a receipt.

Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on March 2, 2011, is invalid and I hereby dismiss the Landlord's application without leave to reapply. The tenancy agreement is in full force and effect.

As the Landlord has not been successful with her application, I decline to award recovery of the filing fee.

### Conclusion

**I HEREBY ORDER** the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated March 2, 2011, is void and is without force or effect.

**I HEREBY DISMISS** the Landlord's application, 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: April 04, 2011.

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Residential Tenancy Branch