



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNDC, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent; an Order of Possession; a monetary Order for money owed or compensation for damage or loss and for a rent reduction.

At the hearing the Tenant withdrew her application for authority to reduce rent, as she simply wishes a monetary Order for money she believed is owed to her.

As the Tenant is currently in possession of the rental unit, I find there is no need to consider the Tenant's request for an Order of Possession.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch, a copy of which was served to the Tenant. The Tenant acknowledged receipt of this document and it was accepted as evidence for these proceedings.

The Landlord submitted a copy of three receipts to the Residential Tenancy Branch, which were not served to the Tenant. As these documents were not served to the Tenant they were not accepted as evidence for these proceedings.

The Landlord submitted a letter to the Residential Tenancy Branch, a copy of which was sent to the Tenant via email. The Tenant stated that she does not check her email regularly and she did not receive this letter. As these documents were not served in

accordance with section 88 of the *Act*, and the Tenant did not acknowledge receipt of the letter, it was not accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Notice to End Tenancy should be set aside and whether the Tenant is entitled to a monetary Order for money owed or compensation for damage or loss, pursuant to sections 46(4), and 67 of the *Act*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 01, 2011; that the Tenant was not required to pay rent for January of 2011; and that she was required to pay monthly rent of \$800.00 on each subsequent month by the first day of each month.

The Landlord and the Tenant agree that the Tenant began working for the Landlord on January 01, 2011, for which she was to be paid \$400.00 per month. The parties agreed that pay due to the Tenant could be deducted from rent owing to the Landlord.

The Landlord and the Tenant agree that the Tenant only paid \$400.00 in rent for February of 2011, as she was entitled to retain \$400.00 in compensation for employment in January of 2011.

The Landlord and the Tenant agree that the Tenant's employment with the Landlord ended on February 18, 2011. The parties agree that the Tenant paid the Landlord \$800.00 in rent for March and April of 2011.

The Landlord and the Tenant agree that the Tenant paid \$318.18 in rent on May 01, 2011. The Tenant stated that she withheld \$481.82 from this payment because she believed the Landlord still owed her \$400.00 in wages from February of 2011 and \$81.82 in expenses she incurred while working for the Landlord.

The Landlord and the Tenant agree that on May 03, 2011 the Landlord posted a

Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 14, 2011. The Notice declared that the Tenant owed \$481.82 in rent that was due on May 01, 2011.

The Landlord and the Tenant agree that the Tenant paid the outstanding rent of \$481.82 on May 27, 2011.

The Tenant is seeking compensation, in the amount of \$400.00, for wages she believes is owed to her by the Landlord and \$81.82 in expenses she incurred for work done on behalf of the Landlord.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$800.00 on the first day of each month, although she was not required to pay rent for January of 2011.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant only paid \$400.00 in rent for February. I find that the Landlord authorized her to withhold \$400.00 in rent from February in compensation for money owed to the Tenant in regards to their employment relationship.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid \$318.18 in rent on May 01, 2011. I find that the Landlord did not authorize the Tenant to withhold any portion of her rent payment for May of 2011. On the basis of the Tenant's testimony, I find that she withheld \$481.82 from her rent payment as she believed the Landlord owed her this amount in wages and employment expenses.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord whether or not the landlord complies with the *Act*, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. I have no evidence before me that the tenant had a right under this Act to deduct a portion of the rent. Regardless of whether money is owed to the Tenant in relation to an employment contract or any other debt not arising from this tenancy, the Tenant did not have the right to withhold a portion of her rent.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act* by giving notice to end the tenancy. On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on May 03, 2011.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid the outstanding rent from May, in the amount of \$481.82, on May 27, 2011. As all of the rent has been paid for May of 2011, I dismiss the Landlord's application for unpaid rent from May.

A Notice to End Tenancy can be waived (withdrawn or abandoned) only by the express or implied consent of both parties. The question of waiver generally arises when the

landlord accepts rent money after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, the question of waiver does not exist, as the Landlord is entitled to that rent payment.

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a right. Implied waiver arises when one party has pursued a course of conduct that would cause the second party to believe that the first party intends to waive a right.

In my view, the fact that the Tenant has applied to set aside the Ten Day Notice to End Tenancy and that she subsequently paid all the rent due for the month of May is, in my view, clear indication that she would like to continue the tenancy. The Landlord submitted no evidence to show that the rent payment tendered on May 27, 2011 was accepted on the basis of use and occupancy only. I therefore find that the Landlord waived the Notice to End Tenancy that was served on May 03, 2011 when the Landlord accepted rent for the entire month of May. On this basis, I dismiss the Landlord's application for an Order of Possession and I grant the Tenant's request to set aside the Notice to End Tenancy.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The *Act* authorizes me to resolve disputes between landlords and tenants that arise out of their tenancy agreement. It does not authorize me to resolve disputes between two parties that also have an employment relationship, even if those parties also happen to have a landlord and tenant relationship. As the Tenant's application for a monetary claim arises from her belief that the Landlord owes her wages and expenses incurred while working for the Landlord, and I have no authority to resolve disputes arising from their employment relationship, I decline to consider whether the Landlord owes wages or other employment expenses to the Tenant.

### Conclusion

As I have dismissed the Landlord's application for an Order of Possession and granted the Tenant's request to set aside the Notice to End Tenancy, I find that this tenancy shall continue until it is ended in accordance with the *Act*.

Dated: June 02, 2011.

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Residential Tenancy Branch