



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, FF

For the landlord – OPR, MNR

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the 10 Day Notice for unpaid rent and to recover his filing fee. The landlord seeks an Order of Possession and a Monetary Order to recover unpaid rent.

Service of the hearing documents was done in accordance with section 89 of the *Act*, I am satisfied that both Parties were served with the others application and notice of hearing.

The landlord and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence 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 tenant entitled to have the 10 Day Notice cancelled?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

The landlord testifies he had an arrangement with the tenant that he would paint the bedrooms of the property and receive six weeks rent free starting from the middle of

December, 2010. The landlord states that the tenancy agreement provided shows the tenancy actually started on February, 15, 2011 and this is the date the tenant should have started to pay rent. The landlord testifies that rent is \$1,100.00 per month and is due on the first of each month. He states he entered into a fixed term tenancy with this tenant which is due to end on January 31, 2012. The landlord states the tenant inspected the rental unit prior to signing the lease and was satisfied with the condition of the unit.

The landlord testifies that the tenant has not paid any rent or utilities since February 15, 2011. The landlord states the tenant has been evasive when he asks for the outstanding rent so the landlord served him with a 10 Day Notice to End Tenancy on May 10, 2011. The landlord states he wants possession of the property and is willing to just accept unpaid rent for May, 2011.

The tenant disputes the landlords' claims. The tenant states he worked for over 200 hours on the house and it was not suitable to rent. He states he was without water in February, 2011. The tenant states the arrangement he had with the landlord was for him to work and let the landlord know how many hours he then owed him. He states the landlord told him to take another months' rent in lieu of work up to May 15, 2011. The tenant states therefore he only owes one months' rent. The tenant states he has now made plans to move from the rental unit on June 15, 2011.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenancy agreement signed by the landlord and tenant shows that the tenancy did start on February 15, 2011 and the landlord submits that this is the date that rent was due from. The landlord argues that the tenant was aware of this when he signed the tenancy agreement. The tenant argues that this was not the case and a different arrangement was in place however, the tenant has provided no evidence to support this.

Section 26 of the Act states: *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, it is my decision that rent was due from February 15, 2011 as stated on the signed tenancy agreement and the tenant has failed to pay rent and utilities since this time. Therefore the landlord is entitled to recover unpaid rent for May, 2011 as requested on his application and he will receive a Monetary Order for \$1,100.00 pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the tenant door it was deemed served three days later and therefore the amended date of the Notice would be May 23, 2011 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days but did apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, as I have found the tenant does owe rent and utilities I find that the Notice will be upheld and grant the landlord an order of possession pursuant to section 55 of the *Act*.

### Conclusion

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

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,100.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **June 15, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: June 07, 2011.

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Residential Tenancy Branch