



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR MNR MNSD MNDC FF  
CNR MNDC OLC ERP RP PSF RR

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent. 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 December 18, 2009. The Tenant confirmed receipt of the hearing package and evidence sent by the Landlord.

The parties attended 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. Has a 10 Day Notice to End Tenancy been issued?
2. Is the Tenant still occupying the rental unit?

### **Background and Evidence**

The Landlord testified and confirmed he did not serve the Tenant or the *Residential Tenancy Branch* with evidence in support of his claim. He stated that they had a verbal tenancy agreement and the Tenant occupied the rental sometime around March 3,

2011. Rent is payable in the amount of \$500.00 and the Tenant paid a security deposit of \$250.00 on her first day.

The Tenant testified and confirmed she delivered her evidence to the Landlord on June 1, 2011 and to the *Residential Tenancy Branch* today, June 3, 2011. She advised she has occupied the rental unit since January 31, 2011 and her rent was \$500.00 per month. She paid the security deposit of \$250.00 on January 31, 2011. She stated that she vacated the rental unit on May 31, 2011 and provided her new address as listed on the front of this decision.

### Analysis

The Tenant did not provide copies of her evidence in accordance with section 3.5(a) of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Tenant's evidence will not be considered in my decision. I did however consider the Tenant's testimony.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord and Tenant.

The 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 and Tenant's claim, in particular when they are asking for an Order of Possession or to have the Notice cancelled.

The responsibility of proving a claim is on the person making the claim. As the Landlord and Tenant failed to provide a copy of the Notice, I find they both have provided insufficient evidence to prove their claim and they are hereby dismissed without leave to reapply.

The testimony supports the Tenant has vacated the property as of May 31, 2011. In the absence of evidence to support her application; I hereby dismiss the Tenant's claim, without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

I HEREBY DISMISS the Tenant'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: June 03, 2011.

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Residential Tenancy Branch