



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR MNR MNSD FF  
CNR MT O 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 for Cause, a Monetary Order for unpaid rent 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 for other, to request reduced rent and more time.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of the hearing documents and evidence submitted from the other party, 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 and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to end this tenancy in accordance with that Notice?
3. Has the Tenants breached the *Residential Tenancy Act*?
4. If so, has the Landlord met the burden of proof to obtain a Monetary Order and an Order of Possession as a result of that breach?

### **Background and Evidence**

I heard undisputed testimony that the Tenants have occupied the basement suite of this property since approximately October 1, 2010. The property was sold effective

February 1, 2011 and the new owner moved into the upper floor of the house. Rent is payable on the first of each month in the amount of \$875.00 and on approximately October 1, 2010 the Tenants paid \$425.00 as the security deposit.

The Landlord testified that when rent was not paid in full for May 1, 2011 a 10 Day Notice was posted to the Tenants' door on May 25, 2011 for unpaid rent of \$625.00. The Tenants have not paid the balance owing and have not paid anything towards June 1, 2011 rent leaving a balance due of \$1,500.00 for unpaid rent. The Landlord is seeking an Order of Possession effective today if possible.

The Tenant confirmed there have been no payments of rent since receiving the 10 Day Notice and they do not have an Order authorizing them to withhold their rent. She states she provided the Landlord with a written payment plan with their May 1, 2011 payment that would have their rent payments caught up by today; and that the Landlord verbally agreed to this payment plan.

The Landlord stated that she did not agree to a payment plan and wished to proceed with her application.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which consisted of, among other things, a copy of the 10 Day Notice, a copy of a 1 Month Notice, and a statement from the Landlord.

### **Landlord's application**

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon,

the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent for \$1,500.00 which consist of \$625.00 for May 2011 and \$875.00 for June 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I approve the Landlord's claim of **\$1,500.00** unpaid rent.

**Filing Fee** The Landlord has succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid Rent for May 2011 and June 2011	\$1,500.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$1,550.00</b>
Less Security Deposit of \$425.00 plus interest of \$0.00	-425.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,125.00</b>

### Tenant's application

In the course of this proceeding and upon review of the Tenants' application, I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the Tenants' request for more time to make her

application and to set aside, or cancel the Landlord's Notice to End Tenancy for unpaid rent, and I dismiss the balance of the Tenants' claim with leave to re-apply.

As I have found in favor of the Landlord's application above and granted an Order of Possession and Monetary Order, the Tenant's application is now moot and is dismissed without leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,125.00**. The Order must be served on the respondent Tenants and is enforceable through the Provincial Court 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 22, 2011.

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Residential Tenancy Branch