



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

### Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

### Background and Evidence

On June 6, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that the tenant has not paid all of the March 2010 rent and owes the landlord \$603.94 in unpaid rent. The landlord stated that rent for July and August 2011 has been paid by the tenant and that the landlord did provide the tenant with a receipt stating 'for use and occupancy only'. The landlord has entered into evidence a ledger that shows all of the payments with corresponding cheque numbers sent by the Ministry of Employment & Assistance starting in March 2010.

The tenant stated that the rent has been paid the Ministry of Employment & Assistance and has submitted into evidence a letter and print-outs from the ministry that show two cheques; 19138338 and 9168946 that the ministry states were directly issued to and cashed by the landlord for the March 2011 rent. The tenant does not recall the landlord giving her a receipt for *'use and occupancy only'*.

The tenant stated that she did not get records from the ministry dating back to the start of the tenancy in 2009 as the landlord had only provided receipt of payments from March 2010.

The landlord in this application is seeking an order of possession and compensation in the amount of \$603.94 for unpaid rent.

The landlord requested to have the hearing adjourned and not have the notice dismissed and this request was denied.

The landlord requested to have matters related to the issuance of a 1 month notice to end tenancy for cause discussed and as that notice is not part of this application that request was denied.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to an order of possession for unpaid rent and a monetary order for unpaid rent.

Evidence submitted by the tenant reflects that the landlord was directly paid for the tenant's March 2010 rent by the Ministry of Employment & Assistance. The cheques listed in the ministry document appear on the landlord's ledger and the landlord has applied these payments to the February and March 2010 rent and not just the March 2010 rent.

I do not find it reasonable that the ministry, who has been directly paying the tenant's rent since September 2009, would then miss making a payment in March 2010. It is also very confusing for a tenant to be given a notice for unpaid rent for the month of June 2011 when the month in question is March 2010.

As questions remain as to whether or not the rent has or has not been paid, and what month rent is still owing on (February or March 2010) it is not reasonable to either evict the tenant or demand payment from the tenant until the payment schedule has been thoroughly investigated.

To determine if any rent is due to the landlord, the landlord will be required to provide the tenant with a print out of the payment ledger that dates back to the start of the tenancy in 2009. The tenant will then be required to take this information to the ministry and have them compare their records with the landlords.

If it is determined that rent remains unpaid and it is not paid, the landlord will need to provide the tenant with a new 10 day notice to end tenancy for unpaid rent.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated June 6, 2011 is hereby dismissed with the result that the tenancy continues uninterrupted.  
The landlord's application is dismissed in its entirety without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated June 6, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

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: August 19, 2011.

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Residential Tenancy Branch