



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes For the Tenant: CNC, MNDC  
For the Landlord: OPR, OPC, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The tenant has applied to cancel the Notices to End Tenancy, for a monetary order for money owed or compensation for damage or loss, and for an order seeking the landlord's compliance with the Residential Tenancy Act, Residential Tenancy regulations or the tenancy agreement.

The landlord applied seeking an order of possession based upon causes and recovery of the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

On a procedural note, the landlord testified and supplied evidence that the landlord's original application, which requested only an order of possession based upon cause and the filing fee, was amended on August 4, 2011, and served upon the tenant, via personal service, on August 5, 2011. The amended application sought an order of possession based upon unpaid rent, the Notice for which was served on the tenant on July 26, 2011, via personal delivery. The landlord's agent testified that the box for an order of possession based upon landlord's use of the property was inadvertently marked and the application should be based upon unpaid rent.

The amended application additionally sought a monetary order for unpaid rent for July and August 2011, in the amount of \$1,440.00 and for money owed or compensation for damage or loss and to retain the security deposit .

The tenant testified that he had received delivery of the 10 Day Notice and the amended application on the dates mentioned and understood the requests of the landlord.

After consideration, I have allowed the landlord's amended application and allowed the landlord's verbal request to amend the amended application to seek an order of

possession based upon unpaid rent, as allowed under section 62 of the Residential Tenancy Act. As a result, however, I have amended the tenant's application to seek a cancellation of the 10 Day Notice.

Preliminary Issue:

A document on behalf of the tenant was delivered to the Residential Tenancy Branch on August 12, 2011. The document was from the tenant's attending physician, who stated that his patient, the tenant, was "not emotionally capable of self representation in court arbitration on Monday August 15<sup>th</sup> due to excessive stress, anxiety and physical exhaustion."

Upon query to the tenant concerning this letter, the tenant stated that he had rested over the weekend and was prepared to go forward with the hearing. The tenant presented himself ready to represent himself in the hearing.

Issue(s) to be Decided

Has the tenant established an entitlement to a cancellation of the Notices to End the Tenancy?

Has the landlord breached the Act or tenancy agreement, entitling the tenant to an Order for monetary relief?

Has the landlord established an entitlement to an order of possession?

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an Order for monetary relief and to recover the filing fee?

Background and Evidence

The evidence and testimony indicates that this month to month tenancy started on March 1, 2008, monthly rent is \$720.00, and the tenant paid a security deposit of \$347.50 on February 7, 2008.

Notices to End the Tenancy:

Pursuant to the Rules of Procedure, the landlord proceeded first to in the hearing to explain why the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent were issued.

The landlord testified that tenant was served with a 10 Notice to End Tenancy for unpaid rent on July 26, 2011, via personal delivery. The Notice contained a stated effective move-out date of August 8, 2011, and listed unpaid rent in the amount of \$720.00 due on July 1, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice. As noted earlier, the tenant's application was amended to dispute the Notice; therefore, I consider that the tenant disputed the Notice within the required 5 days.

The landlord provided affirmed testimony that the tenant did not pay the rent due listed on the Notice, \$720.00, did not pay rent of \$720.00 due on August 1, 2011, and currently owed the amount of \$1,440.00 in unpaid rent.

The tenant acknowledged receipt of the Notice and that he did not pay the outstanding rent. However, the tenant stated due to the landlord's agent's accusations, as alleged by the tenant, and the situation surrounding police calls, the tenant became confused as to whether rent was due or whether it was paid. The tenant stated also that he did not have enough money to pay for food and that his hunger created confusion for him.

In response, the landlord's agent denied creating the confusion and denied making the accusations against the tenant.

The hearing also dealt with the issue of substantiating and defending against the landlord's Notice to End Tenancy for Cause. Included in the causes listed is that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent, the building manager, BA, testified that on July 3, 2011, she heard the tenant using the water hose, went to that area and told him he had to stop, as she had before. According to the landlord's agent, the tenant then turned the hose on her and sprayed her in the face with the nozzle. The agent stated she called the police and has been afraid to go out of her residential unit since that time.

The tenant responded that the agent has been belligerent to him, acting aggressively, and making accusations against him.

Tenant's monetary claim:

The tenant has applied for a monetary order in the amount of \$25,000.00, for intentional infliction of emotional distress.

The tenant testified that he is seeking this amount due to the landlord's agent, BA, alleged ongoing aggressive behaviour, name calling and interference with his 5 year old daughter.

The tenant also stated that the agent has accused him of being a thief and has caused him "distress, humiliation, fear and emotional suffering," which has caused the tenant to seek medical attention at least 8 times since the previous dispute resolution.

The landlord's agent denied the allegations of the tenant, stating it was she who was in fear of the tenant due to the alleged assault.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In addressing the tenant's Application as follows:

#### 10 Day Notice to End Tenancy:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. The tenant has not submitted evidence that he had a legal right to withhold rent.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant did dispute the Notice within five days, but was unable to show that he did not owe the landlord rent or had some other legal right to withhold rent.

Therefore, I find the 10 Day Notice was valid when it was issued and as I therefore find the tenancy has ended for the tenant's failure to pay rent, I **dismiss** the tenant's application requesting cancellation of the Notice, **without leave to reapply**.

As I have found that this tenancy is ending due to the tenant's failure to pay rent, it was not necessary to consider the 1 Month Notice to End Tenancy for Cause.

#### Tenant's Monetary Claim of \$25,000:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

In addressing the tenant's claim for monetary compensation, I find the tenant has failed to establish an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement. In reaching this decision, I am guided by Residential Tenancy Branch section 16 Claims in Damages.

There is no substantiation, or proof, that the landlord has caused the tenant to suffer or will incur these claims involving his declining health and or the landlord's agent's alleged actions. The tenant stated that he has suffered medically, yet has not submitted any evidence attributing his poor health to the alleged actions of the landlord. Additionally, I find the tenant has submitted insufficient evidence to prove that the landlord's agents acted in a belligerent or threatening manner or any manner other than as a building manager.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement.

I also do not find that the tenant has met the requirement for a claim for aggravated damages, if such is the claim, and the requirement is that the aggravated damages must be specifically sought.

Based on the aforementioned I find the tenant has failed to prove the test for damage or loss, as listed above, and I therefore **dismiss** his claim for \$25,000.00, **without leave to reapply**.

As I have dismissed the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for Unpaid Rent, I do not find the tenant's request seeking the landlord's compliance with the Act to be necessary.

I therefore **dismiss** the tenant's application for the landlord's compliance.

Due to the above, I **dismiss** the tenant's application in its entirety.

#### Landlord's Application

As I find the tenancy has ended for the tenant's failure to pay rent, the landlord is entitled to regain possession of the rental unit. I therefore grant the landlord's application and grant the landlord an Order of Possession effective **2 days** after service on the tenant.

I am enclosing an Order of Possession with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Supreme Court for enforcement should the tenant fail to comply with this Order of Possession.

I find that the landlord has established a total monetary claim of **\$1,490.00** comprised of unpaid rent of **\$1,440.00** for July and August 2011, and the **\$50.00** fee paid by the landlord for this application.

I allow the landlord to retain the tenant's security deposit of \$347.50 in partial satisfaction of the claim, at the landlord's request, and I grant the landlord an order under section 67 of the Act for the balance due in the amount of **\$1,142.50**.

I am enclosing a Monetary Order for **\$1,142.50** with the landlord's Decision. This Order is a **legally binding, final Order**, and it may be filed in the Provincial Court (Small Claims) for enforcement should the tenant fail to comply with this Monetary Order.

Conclusion

The tenant's Application is dismissed, without leave to reapply.

The landlord is granted an order of possession and a monetary order for \$1,142.50.

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 15, 2011.

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Residential Tenancy Branch