



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNSD, FF*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to his monetary claim?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on February 01, 2011. The rent is \$300.00 per month due on the first day of each month.

The tenant failed to pay rent on August 01, 2011 and on August 03, 2011, the landlord served the tenant with a ten day notice to end tenancy for unpaid rent. The tenant disputed the notice in a timely manner but did not pay the outstanding rent. He agreed that he owes the landlord \$283.81 for utilities and \$900.00 for rent.

The tenant stated that he rented the basement suite without a kitchen and entered into a verbal service contract with the landlord to install a kitchen, light fixtures and locks. The tenant is claiming a total of \$1,700.00 for supplies and labor. The tenant also stated that the landlord promised to cover his costs of moving out of the rental unit and told him that he was not required to pay rent.

The landlord stated that he specifically told the tenant not to carry out any work in the unit and that he did not at any time promise to cover the tenant's cost of moving. He also denied having told the tenant that he was not required to pay rent.

The tenant did not have any documentary evidence to support his testimony that the landlord hired him to install cabinets, locks etc. nor did he have any documentary evidence to support his claim that the landlord promised him moving costs and allowed him to live rent free.

The landlord has applied for an order of possession effective two days after service on the tenant and a monetary order for unpaid rent of \$1,183.81 plus \$50.00 for the filing fee.

### **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on August 03, 2011 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective February 01, 2010. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. As agreed to by the tenant, I find that the tenant did not pay rent and utilities for three months and now owes the landlord \$1,183.81.

I find that the landlord has established a claim of \$900.00 for unpaid rent plus \$283.81 for utilities. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$1,233.81**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant made an application for a monetary order based on his verbal agreement with the landlord. In the case of verbal agreements, I find that when verbal terms are clear and when both the Landlord and Tenant fully agree on the interpretation, there is no reason why such terms cannot be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof.

In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. The tenant did not have provide documentary evidence to support his version of the verbal agreement and therefore, for this reason, I am not prepared to interpret whether either party fulfilled the agreed-upon terms and I find that the tenant's application must be dismissed.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$1,233.81**.

The tenant's application is dismissed in its entirety.

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: September 09, 2011.

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Residential Tenancy Branch