



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O OPR

### Preliminary Issues

During the course of the hearing the Tenant and the Landlord requested that we amend the Landlord's application to include the Landlord's request for an Order of Possession based on the 10 Day Notice to End Tenancy that was issued and served upon the Tenant on November 12, 2011. The Tenant affirmed that he has not made application to dispute this Notice as he felt he could discuss the Notice at today's hearing.

Based on the aforementioned, and the agreement of both parties, I approve the Landlord's request to amend the application to include a request for an Order of Possession for unpaid rent, Pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession due to the tenancy agreement being frustrated and for unpaid rent.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, 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 the Tenant breached the *Residential Tenancy Act*, regulation, and or tenancy agreement by failing to pay his rent?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act*?
3. Has the Landlord met the burden of proof that the rental unit is uninhabitable or that the tenancy agreement is otherwise frustrated?
4. If so, is the Landlord entitled to an Order of Possession pursuant to section 56.1 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a verbal tenancy agreement that began on December 1, 2010 and that on December 8, 2011 the Tenant paid the Landlord \$250.00 as the security deposit.

The Landlord affirmed that rent was payable on the first of each month in the amount of \$490.00 however the Tenant testified his rent payment was \$500.00 per month.

The Landlord advised that on October 2, 2011 her house was set on fire by an unknown arsonist rendering her house damaged and uninhabitable while repairs are being performed by the insurance adjusters. She stated that she had a conversation with the Tenant the next morning at which time he informed her that he did not have tenant's insurance and that he could not afford to relocate to another unit as he did not have any money.

The Landlord stated that in response to the Tenant's situation she entered into an agreement with the Tenant that she would return the \$420.00 he had paid her for partial rent for October 2011 so that he could afford to move. She referred to her documentary evidence which included, among other things, a copy of the agreement the Tenant signed for the return of his rent money.

The Landlord confirmed that as of this hearing the Tenant is still in the rental unit refusing to move out which is delaying the repairs to her house. The Tenant has failed to pay her for October or November 2011 rent so she issued him a 10 Day Notice to End Tenancy on November 12, 2011 and he still has not paid her rent. She is seeking possession of her unit as soon as possible.

The Tenant stated that he is of the opinion that he does not need to vacate the rental unit for repairs to be conducted. He confirmed that he has not vacated the property at all since the fire, even though the Landlord returned his \$420.00 that he had paid for October 2011 rent. He states that he did not know that he was expected to move out when he signed the agreement for the return of his rent money and that the Landlord came to his rental unit three hours after he signed the paper asking why he was not moving out.

The Tenant advised that he has requested to speak with the Landlord and her son on several occasions about how much rent should be, given the current state of the property, but that the Landlord refuses to discuss the matters with him. He confirmed he has not made an application for dispute resolution and that he has not paid anything

towards October 2011 rent or November 2011 rent since the Landlord returned his \$420.00 payment made for October 1, 2011.

### Analysis

When making application for an Order of Possession, the applicant Landlord bears the burden of proof of the existence of the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

The *Residential Tenancy Policy Guideline # 16* provides that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent and a landlord is expected to provide the premises.

Section 26 of the *Act* provides that a Tenant must be rent in accordance with the tenancy agreement. I note that there is no provision in the *Act* that allows a Tenant to withhold the payment of rent without first obtaining an Order from the *Residential Tenancy Branch* allowing him to do so.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the *Act* and I find that it was personally served upon the Tenant in a manner that complies with the *Act* on November 12, 2011.

The evidence supports the Tenant has occupied the rental unit continuously since October 2, 2011, and has not paid rent in accordance with his tenancy agreement for October 2011 or November 2011. Accordingly, 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 Tenant failed to pay the rent or applied to cancel the Notice within 5 days after receiving this notice. Therefore, the Tenant is 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.

Having granted the Landlord an Order of Possession based on the 10 Day Notice to End Tenancy there is no need to provide an analysis for ending this tenancy due to frustration.

Conclusion

The Landlord's decision will be accompanied by an **Order of Possession effective 2 Days upon service to the Tenant**. This Order is legally binding and must be served upon the Tenant.

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: November 23, 2011.

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Residential Tenancy Branch