



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, CNR, MNR, FF

### Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent and recovery of the filing fee. The Tenant’s Application requested that the 10 Day Notice to End Tenancy for unpaid rent be cancelled.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 14, 2011, and provided the receipt and tracking slip from Canada Post as evidence. The Landlord amended their Application with our office on October 19, 2011 and provided evidence of the receipt and tracking slip from Canada post showing that she also served the Tenant on October 19, 2011 with the amended Application by registered mail. I find that the Tenant was served the Application and Notice of Hearing and the amended Application in accordance with section 88 of the Residential Tenancy Act (the “Act”).

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

The Tenant made a cross Application requesting that the 10 Day Notice to End Tenancy for unpaid rent be cancelled. The Tenant was provided with a Notice of Hearing by our office for a hearing into his Application to be held the same date and time as the Landlord’s hearing of their Application. I have also determined that the Tenant was properly served with the Notice of Hearing of the Landlord’s Application. I find it is appropriate to dismiss the Tenant’s Application without leave to reapply.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of possession and a monetary Order for unpaid rent and recovery of the filing fee?

### Background and Evidence

The Landlord provided affirmed testimony that the Tenancy commenced on February 01, 2011 and rent is due on the first day of the month in the amount of \$450.00. The Landlord provided a copy of their ledger into evidence which shows the Tenant's payments to the Landlord since the outset of the tenancy. The Landlord identified in their evidence that the Tenant paid the Landlord a security deposit of \$225.00 on July 26, 2011.

The Landlord testified that the Tenant did not pay rent for October 2011 and that he owes \$450.00 in rent. The Landlord testified that she served the Tenant with the 10 Day Notice to End Tenancy for unpaid rent by registered mail on October 06, 2011. The Landlord provided a copy of the receipt and tracking slip from Canada Post as evidence.

The Landlord stated that the Tenant received the Notice. The Landlord filed an Application for Dispute Resolution on October 12, 2011. The Landlord stated that the Tenant responded with an Application for Dispute Resolution on October 17, 2011 requesting that the Notice be cancelled. The Landlord stated that the Tenant did not pay the outstanding rent and did not move out within ten days of being served with the Notice.

The Landlord testified that the Tenant did not pay rent for October 2011. The Landlord stated that the Tenant has moved out of the rental unit, however, he has not returned the keys at this time and some of his belongings are still around the premises as he has been in the building to do laundry recently. The Landlord is requesting an Order of possession.

The Landlord also requests a monetary Order for \$450.00 for outstanding rent for October 2011.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

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

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 06, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by registered mail to the Tenant's address at the rental unit, it was deemed to have been served by October 11, 2011, which is five days from the date of the registered mail. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent within five days from the date of service. The deadline to do so was October 16, 2011. Although the Landlord indicated that the Tenant had until October 17, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to October 21, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days. The Tenant also failed to attend the hearing into his Application for Dispute Resolution of the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on October 21, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an Order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement requires that rent is due on the first of the month. I find that the Tenant failed to pay rent for October and did not vacate the rental unit within 10 days of service of the Notice. As a result, I find that the Landlord has established a monetary claim of \$450.00, comprised of rent owing for October 2011.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary Order against the Tenant bringing the total amount owing to \$500.00.

I Order that the Landlord retain the security deposit (\$225.00), in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$275.00.**

Conclusion

The Tenant's Application is dismissed without leave to reapply.

I find that the Landlord is entitled to an Order of possession effective **two days after service** on the Tenant. This Order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary Order for the balance due in the amount of **\$275.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The Orders accompany the Landlord's copy of this decision.

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 08, 2011.

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Residential Tenancy Branch