



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, OPB, MNR, MNDC, FF, O

### 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, compensation for damage or loss, and recovery of the filing fee. The Tenant’s Application requested that the 10 Day Notice to End Tenancy for unpaid rent be cancelled, and requested a monetary order for compensation for damage or loss.

The Landlord and Tenant DB attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### Preliminary Matter(s)

The Landlord has requested to amend their Application stating that they wanted to remove CG as a tenant from their documents, as they were satisfied with recent evidence that they received from CG that she had never been a party to the tenancy agreement, she had not signed the tenancy agreement, and she had never lived in the rental unit. As a result, I grant the Landlord’s request to amend their Application to remove CG as a tenant. Tenant DB who attended the hearing indicated that he had no objection to this.

The Landlord indicated at the hearing that they no longer require a monetary order for September and October’s rent. The Landlord did not apply for November’s rent on their application as it was premature to do so. The Landlord is at liberty to apply for November’s rent on a separate application should this be an issue for them.

The Landlord and Tenants indicated several matters of dispute on their cross Applications, however, there is only one main issue that is appropriate to deal with during this proceeding, the 10 Day Notice to End Tenancy. Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Landlord and Tenants’ other disputes, regarding compensation for damage and loss, as set out on each of their Applications with liberty to reapply.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession, and the filing fee?

Background and Evidence

The Landlord and Tenants have a tenancy agreement which commenced on September 27, 2011. The parties agree that the rent is \$600.00 per month, due on the first of the month.

The Landlord stated that the Tenants did not pay rent for September in the amount of \$300.00 and did not pay rent that was due October 1<sup>st</sup> in the amount of \$600.00. The Landlord stated that they served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent at the rental unit on October 7, 2011 by posting on the door of the rental unit. Tenant DB confirmed that the date of service stated by the Landlord is correct and that they have received the Notice, and that they filed their Application for Dispute Resolution on October 11, 2011 requesting to cancel the Notice.

The Notice to End Tenancy informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The Notice stated that the Tenants had until October 17, 2011 to move out of the rental unit. Tenant DB confirmed that they are still in the rental unit and have not moved out. Tenant DB stated that they had been withholding rent from the Landlord due to water leaks in their unit, which they are waiting for the Landlord to rectify. The Landlord stated that they expect the rent to be paid on time. The Landlord stated that the Tenants did not pay September and October rent until October 27, 2011, so the Landlord issued the Tenants receipts stating "for use and occupancy only". Tenant DB confirmed that the rent was paid on October 27<sup>th</sup> and he received the receipt as indicated by the Landlord.

The Tenants want the Notice to be cancelled. The Landlord stated that they have been clear with the Tenants about the rent being paid on time and that they are seeking an order of possession plus the filing fee for this application.

Analysis

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

The evidence of both parties confirmed that the Tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 07, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted at the rental unit, it was deemed to have been served on October 10, 2011 (three days from the date posted). The Notice states that the Tenants had five days to pay the full amount of the outstanding rent or the tenancy would end from the service date. The Tenants did not pay the outstanding rent within five days from the date of service. The deadline to do so was October 15, 2011. The Landlord indicated that the Tenants had until October 17, 2011 to vacate the premises, however this date is corrected to October 20, 2011, which is 10 days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days of service of the Notice and the Tenants did not move out.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on October 20, 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 between these parties is that rent is due on the first of the month. The Tenants agree that they did not pay the Landlord the rent for September and October, until October 27, 2011. The Landlord issued a "receipt which stated for use and occupancy only". I find that the Landlord is entitled to an order of possession for the rental unit effective 2 days from the date of service of the order on the Tenants.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I grant the Landlord an order under section 67 for the filing fee of **\$50.00**.

### Conclusion

The Landlord and Tenants' other disputes, compensation for damage or loss, as set out on each of their Applications are dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenants. This order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to monetary order for the filing fee in the amount of **\$50.00**. This order must be served on the Tenants 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 07, 2011.

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Residential Tenancy Branch