



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      For the tenant-CNR, ERP, RP, RR, FF  
                             For the landlord-OPR, OPL, MNR, FF

### Introduction

This hearing dealt with cross applications filed by both parties seeking remedy under the *Residential Tenancy Act* (the "Act").

The tenant is seeking an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") issued by the landlord, an order requiring the landlord to make emergency repairs and repairs, for an order allowing a reduction in rent and for recovery of the filing fee.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for orders requiring the landlord to make emergency repairs and repairs and for authorization to reduce the rent are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy and the landlord's application.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy and for recovery of the filing fee?

Is the landlord entitled to an order of possession, a monetary order and for recovery of the filing fee?

### Background and Evidence

Although there is no written tenancy agreement, the parties agree that the month to month tenancy started on October 31, 2011, monthly rent is \$650.00 and that rent is due on the first day of the month. The parties could not agree as to the amount paid as a security deposit, with the tenant stating that he paid \$300.00 or \$350.00. The landlord stated the amount of security deposit was \$200.00. No evidence of a receipt of payment was produced by either party, although the landlord stated that she had a receipt.

The landlord applied seeking an order of possession based upon Notices to End Tenancy due to unpaid rent as well for the landlord's use of the property.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain and support the Notices to End the Tenancy.

### **Landlord's Application:**

Upon query after an examination of the evidence, the landlord acknowledged that she served upon the tenant, on February 9, 2012, only the first page of a 10 Day Notice for Unpaid Rent, which listed two separate amounts of unpaid rent, and not the second page of the Notice.

Additionally, the landlord submitted that she served upon the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property. However upon query after an examination of the evidence, the landlord acknowledged that the notice she referred to was a handwritten note to the tenant, signed on December 31, 2011, informing the tenant he had two months to move out of the rental unit.

The landlord's monetary claim is in the amount of \$1,700.00, for alleged unpaid rent for January and February, 2012, and for loss of revenue for March, 2012.

### **Tenant's Application:**

The tenant submitted that he does not owe unpaid rent and that his bank account information shows that the landlord is being paid every month. Despite this testimony, the tenant stated that he pays rent to the landlord in cash every month, as she has demanded, and in turn, the landlord refuses to give him a receipt.

### Analysis

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

**Landlord's application:**

Section 13(1) of the *Residential Tenancy Act* requires landlords to prepare a written tenancy agreement for tenancies that begin after January 01, 2004. I find that the landlord failed to comply with this section of the *Act*.

However, based on the undisputed evidence presented at the hearing, I find that these parties have a month-to-month tenancy for which the tenant is obligated to pay monthly rent of \$650.00. I do not have enough testimony or any evidence to determine the amount of security deposit paid by the tenant.

The purpose of serving documents under the Residential Tenancy Act is to notify the person being served of their breach or reasons for termination and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach or reasons and has the burden to prove the reason indicated on the Notice.

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the *Act*. Without a full copy of the Notice to End Tenancy that the landlord served on the tenant, I cannot conclude that the Notice is effective and therefore enforceable.

I therefore find that the landlord provided insufficient evidence to show the tenant was issued a valid 10 Day Notice to End Tenancy. I also find that the landlord did not issue the tenant any notice to end the tenancy for landlord's use, as I find a handwritten demand to leave does not comply with section 52.

As I have found that the landlord has failed to comply with section 52 of the *Act* in issuing Notices to End the Tenancy, I therefore **dismiss** her application requesting an order of possession, without leave to reapply.

As I have found that the landlord's 10 Day Notice to End Tenancy for Unpaid Rent is invalid, I find that the landlord submitted insufficient evidence to support her claim for unpaid rent. I therefore **dismiss** the landlord's application for a monetary order, **with leave to reapply**.

Even had I not dismissed the landlord's application due to an insufficient Notice for unpaid rent, I would still make the determination to dismiss the landlord's application due to insufficient evidence to prove that the tenant owed unpaid rent. In reaching this conclusion, I find the landlord has failed to supply accounting or other records to support her claim.

I also accept the tenant's testimony that the landlord has failed to provide receipts for his rent payments. In reaching this conclusion, although the landlord stated she did issue receipts, I relied on the landlord's failure to comply with other provisions of the *Act*, such as providing a written tenancy agreement and issuing Notices in the proper form.

I therefore, pursuant to section 62 (3) of the Act, order the landlord to provide the tenant with receipts for any future rent or other payments.

As I have dismissed the landlord's application, I decline to award her the filing fee.

**Tenant's application:**

As I have dismissed the landlord's application for an order of possession, I allow the tenant's application, and I **order** that the Notice to End Tenancy issued February 9, 2012, is **cancelled**, with the effect that this tenancy continue until it may otherwise end under the Act.

I also find that the handwritten note, dated December 31, 2011, purported to be a 2 Month Notice to End Tenancy for Landlord's Use of the Property, likewise has no force or effect.

As I have allowed the tenant's application, I find that he is entitled to recovery of the filing fee. The tenant may deduct the amount of \$50.00 from the next or a future month's rent payment in satisfaction of his monetary award.

Conclusion

The landlord's application is dismissed.

The tenant's application is granted.

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: March 01, 2012.

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Residential Tenancy Branch