



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR

For the landlord – OPR, OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications. The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent; for an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession on one or both Notices?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security and pet deposits?

Background and Evidence

Both parties agree that this month to month tenancy started on May 01, 2011. Rent for this unit is \$1,050.00 per month and is due on the first day of each month in advance. The tenant paid a security deposit of \$500.00 and a pet deposit of \$400.00 at the start of the tenancy.

The landlord testifies that the tenant has failed to pay all the rent owed for October, 2011 leaving a balance of \$50.00. The tenant also had an outstanding balance of rent from November, 2011 of \$50.00. The tenant failed to pay the rent owed for December, 2011 on the day it was due. The landlord served the tenant with a 10 Day Notice to End Tenancy on December 15, 2011. The tenant paid \$700.00 towards the end of December leaving an outstanding balance of \$350.00. The landlord testifies that the tenant failed to pay all the rent due for January, 2012 leaving an outstanding balance of \$300.00 and the landlord testifies that the tenant failed to pay the rent for February, 2012 of \$1,050.00.

The landlord testifies that he served the tenant with a One Month Notice to End Tenancy on January 31, 2012. This Notice has an effective date of March 01, 2012 and gives the reason to end the tenancy because the tenant is repeatedly late paying rent. The landlord has provided a copy of both Notices in evidence, along with a copy of the tenancy agreement and rent receipts.

The landlord seeks an Order of Possession effective two days after service and seeks to keep the tenants security and pet deposit to offset against the outstanding rent of \$1,800.00. The landlord also seeks a Monetary Order for the balance of outstanding rent and to recover his \$50.00 filing fee. The landlord has also applied to recover unpaid rent for March, 2012 however this section of the landlords claim is premature.

The tenant does not dispute that she owes rent of \$1,800.00 and does not dispute that she has been late with her rent for the months stated by the landlord. The tenant states

that she has no problem moving from the rental unit but may require an extra day to move out and clean the unit.

The landlord states he has new tenants waiting to move into the unit for March 01, 2012 but is willing to give the tenant an extra day to vacate.

### Analysis

Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I am satisfied with the undisputed evidence before me that the tenant has failed to pay all the rent due for October, November, December, 2011 January and February, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$1,800.00** pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposit of **\$900.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,800.00
Less Security Deposit	(-\$900.00)
Plus filing fee	\$50.00

<b>Total amount due to the landlords</b>	<b>\$950.00</b>
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I have reviewed all documentary evidence and accept that the tenant has been served with a 10 Day Notice to End Tenancy in person pursuant to s. 88 of the *Residential Tenancy Act*. The 10 Day Notice is deemed to have been received by the tenant on December 15, 2011. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy within five days. The tenant did file an application to dispute the Notice on February 08, 2012.

I also find the tenant was served with the One Month Notice to End Tenancy on January 31, 2012 in person pursuant to s. 88 of the Act. The One Month Notice is deemed to have been received by the tenant on January 31, 2012. The Notice states that the tenant has 10 days to apply for Dispute Resolution or the tenancy would end. The tenant did not file an application to dispute the One Month Notice within 10 days. I further find from the landlords evidence that the tenant has been repeatedly late paying rent.

Based on the foregoing, I find that the tenant is conclusively presumed, under s. 46(5) of the *Act* and s. 47(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants application is dismissed without leave to reapply.

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: February 28, 2012.

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Residential Tenancy Branch