



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, O

### Introduction

This hearing was scheduled to deal with the tenant's request to cancel a Notice to End Tenancy for Unpaid Rent; request for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and other issues. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant provided the following documentary evidence which I have reviewed and considered: the Notice to End Tenancy; a Notice of Entry; and an employment termination letter from the landlord. The landlord did not provide any documentary evidence for this proceeding. Rather, the landlord's agent testified that she was filling in for the landlord's agent that was supposed to participate in this hearing.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
3. Should the landlord be ordered to provide the tenant with tenancy related documents?

### Background and Evidence

The tenant submitted that he commenced living in the rental unit and became an employee of the landlord in early December 2011. The agreed upon monthly rent was \$800.00 and the tenant would be required to pay a \$400.00 security deposit and a \$400.00 pet deposit. The tenant and landlord had agreed that \$600.00 would be deducted from the tenant's first four paycheques to pay the rent for December 2011 and January 2012 and the security deposit and pet deposit. The agreed upon \$600.00 was deducted from the tenant's December 15, 2011 paycheque; his December 30, 2011 paycheque and his January 13, 2012 paycheque. The tenant also paid the landlord

\$405.00 in cash on January 13, 2012. The tenant's employment was terminated by the landlord on January 13, 2012. On January 16, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating \$400.00 in rent was outstanding as of January 1, 2012. The landlord personally served this upon the tenant on January 17, 2012.

The landlord's agent responded to the tenant's submissions by stating that she did not have the tenant's ledger account before her and she could not confirm or deny the tenant's statements with respect to deductions taken from his paycheques. The landlord acknowledged that she did not have sufficient information in front of her to explain how the \$400.00 that appears on the 10 Day Notice was calculated or determined.

The tenant also submitted that he has not been provided a copy of his tenancy agreement or move-in inspection report. The landlord's agent submitted the tenant had requested these documents be held in the landlord's files. The tenant disputed the landlord's submission.

The tenant requested compensation of \$600.00 which he explained was comprised of \$400.00 for return of his security deposit and \$200.00 because he was unable to occupy the rental unit until December 10, 2011. The tenant submitted that the flooring in the unit was installed in early December and he was unable to move his possessions in until December 10, 2011. The tenant further submitted that he signed the tenancy agreement after December 1, 2011 yet the landlord collected rent for the period starting December 1, 2011.

The landlord responded by stating she had a copy of the tenancy agreement before her and that it indicates the tenancy commenced December 1, 2011 although it was not signed by the tenant until December 9, 2011. The landlord's agent acknowledged that the tenant had reached the agreement with respect to taking possession, installing the flooring, compensation and paycheque deductions with the landlord's other agent that could not attend the hearing.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the Notice is valid and that the tenancy should end for the reason indicated on the Notice.

In cases involving a Notice to End Tenancy for Unpaid Rent, the landlord should be able to show how the amount appearing on the Notice was calculated or determined and support the amount with documentation where available. Then, if payment of rent is in dispute, the burden is upon the tenant to show payment was made.

In this case, I find the landlord failed to establish how the amount of \$400.00 was determined and what payments or deductions from the tenant's paycheques were made and recorded by the landlord. Therefore, I find the landlord failed to meet their burden of proof and I cancel the Notice issued on January 16, 2012.

Although I have cancelled the Notice I make no finding as to the amount owed by the tenant for rent (if any) for January 2012 as neither party provided me with their supporting documentation, such as employee pay statements or cheque stubs, tenant ledger account or tenancy agreement. Therefore, the landlord is at liberty to serve the tenant with another 10 Day Notice should rent remain outstanding along with a copy of his ledger account showing how the amount of outstanding rent (if any) was determined.

I heard disputed testimony as to the reason the tenant does not have a copy of his tenancy agreement or move-in inspection report; however, since the tenant is no longer an employee of the landlord and does not have access to the landlord's files, I ORDER the landlord to give the tenant a copy of these documents within two (2) of receiving this decision.

With respect to the tenant's monetary claims I make the following findings. The tenant's request for return of his security deposit is premature since he continues to reside in the unit and his request is dismissed with leave to reapply. The tenant's request for compensation for loss of use of the rental unit in early December 2011 is dismissed with leave as I find the tenant requires the tenancy agreement and move-in inspection report to support of his claim. Upon receiving those documents, or if the landlord fails to comply with my Order, the tenant may make another Application for Dispute Resolution.

### Conclusion

The 10 Day Notice to End Tenancy issued January 16, 2012 has been cancelled. The tenant's request for monetary compensation is dismissed with leave to reapply. The landlord is ORDERED to give the tenant a copy of his tenancy agreement and move-in inspection report within two (2) days of receiving 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: February 09, 2012.

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Residential Tenancy Branch