



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that he personally served the male Tenant with copies of the Application for Dispute Resolution and Notice of Hearing on February 13, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89(1) of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

The Landlord stated that he served the female Tenant with copies of the Application for Dispute Resolution and Notice of Hearing by giving them to the male Tenant on February 13, 2012. In the absence of evidence to the contrary, I find that these documents have not been served in accordance with section 89(1) of the *Residential Tenancy Act (Act)*. At the hearing the female Tenant stated that she understands the male Tenant was served with copies of the Application for Dispute Resolution and Notice of Hearing but he did not provide her with, or show her, copies of these documents.

As I have no evidence to show that the female Tenant actually received copies of the Landlord's Application for Dispute Resolution and she was not served in accordance with section 89(1) of the *Act*, I find that I am unable to proceed with the Landlord's application for a monetary Order that names the female Tenant. The Landlord was given the option of amending the Application for Dispute Resolution to name only the male Tenant or to withdraw his application for a monetary Order and reapply at a later date. The Landlord elected to withdraw his application for a monetary Order.

I find that the female Tenant has been served with the Landlord's Application for Dispute Resolution in accordance with section 89(2) of the *Act* and I am therefore able to consider the Landlord's application for an Order of Possession.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent.

The Landlord and the female Tenant attended the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

#### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether the Landlord is entitled to an Order of Possession for unpaid rent; and whether the Landlord is entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46(4), 55, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy was in place prior to the Landlord purchasing the property; that the Tenants are required to pay monthly rent of \$700.00 by the first day of each month; and that the first rent payment was due to the new landlord on February 01, 2012.

The Landlord stated that he did not receive any rent for February of 2012.

The female Tenant stated that on January 25, 2012 she gave \$350.00 in cash to the male Tenant; that the male Tenant told her that he paid the \$350.00 to the former landlord; and that the male Tenant told her that the former landlord was going to give the payment to their new landlord.

The female Tenant stated that the male Tenant told her that his rent for February had been paid to the former landlord by the Provincial Government on, or about, January 25, 2012. She stated that he also told her that his rent for January had been paid.

The Witness for the Landlord stated that she is the former owner of this rental unit; that she received \$350.00 in rent for January from the female Tenant but she did not receive \$350.00 in rent for January from the male Tenant; that sometime during the latter part of January of 2012 she received a rent payment for the male Tenant from the Provincial Government, in the amount of \$350.00, which she applied to the outstanding debt from January; and that the male Tenant did not provide her with any cash payment for February of 2012.

The Landlord stated that he personally served the male Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 15, 2012, on February 06, 2012.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenants were obligated to pay rent of \$700.00 to the Landlord by February 01, 2012. I find that the Landlord did not receive the rent that was due on February 01, 2012.

In determining that the Landlord did not receive the rent that was due on February 01, 2012, I placed significant weight on the Landlord's testimony that he did not receive any payment for rent for February of 2012.

In determining that the Landlord did not receive the rent that was due on February 01, 2012, I placed significant weight on the Witness for the Landlord's testimony that she did not receive any cash from the male Tenant for rent for February of 2012. While I have no reason to discount the female Tenant's testimony that she gave the male Tenant \$350.00 in cash for rent for February and that he told her he gave that money to the previous landlord, I have no evidence from the male Tenant to show that he did actually pay the money to the previous landlord. I find it entirely possible that both the Witness for the Landlord and the female Tenant are telling the truth, and that the male Tenant simply kept the money given to him by the female Tenant.

In determining that the Landlord did not receive the rent that was due on February 01, 2012, I placed significant weight on the Witness for the Landlord's testimony that she did receive a rent payment for the male Tenant, in the amount of \$350.00, from the Provincial Government, which she applied to his outstanding rent from January of 2012. In the absence of testimony from the male Tenant and/or documentary evidence that shows the male Tenant did not owe \$350.00 in rent for January, I find that this payment was applied to the outstanding rent. In determining this matter I placed little weight on the female Tenant's testimony that the male Tenant had paid his rent for January of 2012, as she had no direct knowledge of that payment.

For all of the aforementioned reasons, I find that the Tenants have not paid their rent for February of 2012. Section 46 of the *Act* stipulates that a landlord may end a tenancy, pursuant to section 46 of the *Act*, by serving notice if rent is not paid when it is due. I therefore find that the Landlord has the right to end this tenancy for unpaid rent.

On the basis of the undisputed evidence presented at the hearing, I find that the male Tenant was personally served with a Notice to End Tenancy on February 06, 2012, pursuant to section 88(a) of the *Act* and the female Tenant was served with a Notice to End Tenancy on February 06, 2012, pursuant to section 88(e) of the *Act*, which declared that the Tenants must vacate the rental unit by February 15, 2012.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the male Tenant received this Notice on February 06, 2012, I find that the earliest effective date of the Notice was February 16, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 16, 2012.

### Conclusion

As the Landlord has established grounds to end this tenancy pursuant to section 46 of the *Act* and the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid rent, I dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I authorize the Landlord to retain \$50.00 from the Tenant's security deposit, as compensation for the cost of filing this Application for Dispute Resolution.

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