



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant filed his Application requesting an order to cancel a 10 day Notice to End Tenancy for unpaid rent, for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord requested an order of possession based on unpaid rent and utilities, a monetary order for unpaid rent and utilities, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on March 5, 2012, by posting on the door. The Notice stated the Tenant owed \$725.00 for rent and \$102.88 for utilities.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the Notice by filing the Application. The Tenant testified that the internet was not working in the rental unit and after telling the Landlord about this, nothing was done to fix the internet. The Tenant testified that he withheld rent due to this. The Tenant also wanted to claim for loss of use of the internet.

### Analysis

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

I find the Tenant has breached section 26 of the Act by withholding rent. The Tenant is not allowed to withhold rent, unless there was some authority for him to do so under the Act, such as an order from a Dispute Resolution Officer allowing him to reduce rent. There is no evidence here that the Tenant had a right to withhold rent under the Act and therefore, I find the Notice to End Tenancy is valid and is enforceable.

I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on March 31, 2012**. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the issue of the internet was not directly related to the main issue of whether or not the tenancy would continue, I dismiss this claim with leave to reapply.

Likewise, I find the Landlord had insufficient evidence that notice was provided to the Tenant regarding the unpaid utilities, in accordance with the Act. Therefore, I dismiss the utilities claim with leave to reapply.

I do find that the Landlord has established a total monetary claim of **\$775.00** comprised of \$725.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the deposit and interest of \$360.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$415.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as provided under the Act, and 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 29, 2012.

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Residential Tenancy Branch