



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent or utilities; a Monetary Order for unpaid rent or utilities; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

There was no copy of a written tenancy agreement before me from the landlord. The landlord testified that the tenancy started in the summer of 2010, and could not recall what month. The rent is \$1100.00 per month and the tenant paid a security deposit of \$550.00.

Through his interpreter, the landlord testified that he went to collect the rent on February 1<sup>st</sup> but no one answered the door. He stated that the tenant ignored him and that on February 4, 2012, he sent the tenant a 10 Day Notice to End Tenancy by registered mail, and provided a tracking number. He said that he returned March 1, 2012 and that again no one answered the door.

The landlord is claiming unpaid rent and utilities for February and March 2012.

The tenant testified that the landlord did not come on February, but on January 29 to collect rent for February, and that she was not home. She stated that when he came on February 1, the landlord refused to accept the rent and told her that she was being evicted. She stated that this happened again March 1, 2012. She said that the agreed pattern is for the landlord to come to the house to collect the rent, which she pays cash. She said that she does not know why this pattern is now broken, only to suspect that the landlord is trying to get rid of the occupants as the same incident occurred with the other tenants.

The tenant said that she never received the 10 Day Notice to End Tenancy for February, but that she received one on March 4, 2012 which was posted on her door.

### Analysis

The landlord bears the burden to prove his claim against the tenant. The landlord provided no documentary evidence to support his claim for unpaid rent. I find this uncharacteristic of a landlord whose primary role in a tenancy is to ensure rent is paid by a tenant. He did not provide any records that a businesslike landlord would be expected to maintain; he did not produce a ledger or an accounting book or any entries concerning this tenancy, not even a tenancy agreement. When tenants pay rent by cash, the Act states that the landlord must produce a receipt; no receipts were provided. Further, the landlord's testimony concerning his attempt to collect rent is vague and

non-specific, and contradicted by the tenant's version who states that the landlord refused to accept payment. I find that the landlord has not proven on a balance of probabilities that the 10 Day Notice to End Tenancy was served properly, and that the tenant did not pay rent. If the tenant has the money to pay the rent within 5 days of serving a notice to end tenancy, the landlord is obliged to accept payment.

Notwithstanding, every tenant in a rental unit owes a statutory obligation towards paying rent on time. The landlord has a duty of care and a right to enforce a tenancy pursuant to the Act. Breaches by a tenant do not prevent the landlord from issuing notices to end tenancy in the future or applications for dispute resolution, and the quantum of the evidence at that time may generate a different outcome.

### Conclusion

The 10 Day Notice to End Tenancy dated February 4, 2012 is of no force or effect and the tenancy continues unless the landlord had grounds to issue a new notice.

Concerning the unpaid rent, the landlord's application is dismissed with 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: March 06, 2012.

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Residential Tenancy Branch