



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RR, FF, MNR, OPR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

### Tenant's application

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy and I dismiss the remaining claims, with liberty to re-apply.

### Landlord's application

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for the outstanding rent, and a request for recovery of the filing fee.

### Tenant's application

### Background and Evidence

On April 1, 2012 a 10 day Notice to End Tenancy was posted on the tenants door, and at the hearing the tenant admitted that he received it on the same date.

The tenant did not file a dispute of the notice until April 10, 2012.

### Analysis

Section 46(4) & 46(5) of the Residential Tenancy Act state:

**(4) Within 5 days after receiving a notice under this section, the tenant may**

**(a) pay the overdue rent, in which case the notice has no effect, or**

**(b) dispute the notice by making an application for dispute resolution.**

**(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

**(b) must vacate the rental unit to which the notice relates by that date.**

In this case the tenant did not pay the outstanding rent or file a dispute of the Notice to End Tenancy within the five day time frame, and therefore the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must vacate the rental unit.

I will not be setting this Notice to End Tenancy aside.

#### Landlord's application

#### Background and Evidence

As stated above, the tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on April 1, 2012 and did not dispute that notice within the required time frame and therefore the landlord does have the right to an Order of Possession.

The landlord is also requesting a monetary order and the landlord testified that:

The tenant has outstanding rent totalling \$7,500.00 with the breakdown as follows:

November 2011	\$850.00
December 2011	\$1650.00
January 2012	\$1650.00
February 2012	\$650.00
March 2012	\$1050.00
April 2012	\$1650.00
Total	\$7500.00

The applicant is therefore requesting a monetary order for the full outstanding rent plus the \$100.00 filing fee, for a total of \$7,600.00

The tenant testified that:

- He does not believe he owes the full amount claimed by the landlords as he believes there were some cash payments made which were not recorded by the landlord and for which he received no receipts.
- He is moving by the end of April 2012 anyway.

### Analysis

I have reviewed the landlord's calculations of rent paid and rent outstanding, and it is my finding that this time there is a total of \$7,500.00 and rent outstanding.

The tenant claims to have made payments that have not been recorded by the landlord, however he has provided no evidence in support that claim.

I therefore allow the landlords full claim for outstanding rent plus the filing fee.

Conclusion

Tenant's application

The request to cancel the Notice to End Tenancy is dismissed without leave to reapply, and as stated above a monetary portion of the claim is dismissed with leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have issued a monetary order in the amount of \$7,600.00.

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: April 25, 2012.

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Residential Tenancy Branch