



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, O, OLC, PSF, RP, RR

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; for Orders for repairs, emergency repairs, compliance, for the landlord to provide services or facilities; and, authorization for a rent reduction. The landlord appeared at the commencement of the hearing and stated that he received the Notice of Hearing but not the tenant's Application for Dispute Resolution.

Despite waiting for the tenant to appear for 10 minutes the tenant failed to appear at the hearing. The landlord verbally requested an Order of Possession and I orally gave my decision to grant the landlord's request pursuant to section 55 of the Act.

Just before I was about to end the teleconference call 12 minutes after the hearing commenced the tenant dialled in, stating he was late at appear due to work obligations. I informed the tenant of my decision to grant the landlord's request for an Order of Possession.

The tenant also stated that he had authorization to withhold rent pursuant to the dispute resolution decision issued March 21, 2012. The tenant acknowledged that he did not supply any documentary evidence for this proceeding and explained that he did not do so because he had submitted evidence for a previous dispute resolution proceeding and because he thought the landlord would have to submit a copy of the 10 Day notice to End Tenancy for Unpaid Rent.

I reviewed the previous decision referred to by the tenant and determined that the tenant had authorization to deduct \$575.00 from a subsequent month's rent. The tenant confirmed he withheld \$575.00 from the April 2012 rent and this dispute revolved around unpaid rent for June 2012.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The following information was undisputed: The tenant is required to pay monthly rent of \$1,075.00. The tenant did not pay rent for June 2012. The landlord did not give the tenant authorization to withhold rent. The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant failed to pay rent of \$1,075.00 for June 2012. The tenant did not pay any monies for July 2012.

In the decision of March 21, 2012 the tenant was not provided authorization to reduce future rent payable except for a one time deduction of \$575.00 from the next rent payment. The tenant satisfied this award by withholding rent for April 2012.

The tenant stated that he withheld rent for June 2012 because he was not satisfied with the decision issued March 21, 2012 and because efforts to have the landlord repair the windows were unsuccessful. The tenant was of the belief that withholding the rent would get the landlord's attention.

### Analysis

Section 26(1) of the Act provides:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Act provides for limited and specific circumstances when a tenant may legally withhold rent. The circumstances presented to me do not constitute one of the permissible reasons when a tenant may withhold rent. Therefore, I find the tenant did not have the legal right to withhold rent for June 2012.

Having found the tenant failed to pay rent for June 2012 and did not have a legal right to withhold the rent, I find no basis under the Act to cancel the Notice to End Tenancy. Therefore, I dismiss the tenant's request to cancel the Notice.

Section 55(1) of the Act provides:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find the criteria of section 55(1) have been met and I grant the landlord's request for an Order of Possession. Provided to the landlord is an Order of Possession effective two (2) days after service.

As the tenancy has ended and the landlord is about to regain possession of the rental unit I find unnecessary to further consider the tenant's requests for orders for repairs, services or facilities. Therefore, the remainder of the tenant's application is dismissed.

### Conclusion

The tenant's application has been dismissed. The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: July 26, 2012.

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Residential Tenancy Branch