



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – CNR, MNDC, FF

For the landlord – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied to cancel the 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?  
Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

This tenancy started on September 01, 2011. This is a fixed term tenancy which is due to expire on August 31, 2012. A written tenancy agreement is in place which indicates that rent is \$950.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenant owes a balance of rent for June, 2012 of \$950.0. The tenant has also failed to pay rent for July, 2012 of \$950.0. The total amount of outstanding rent is \$1,900.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 05, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 17, 2012. The tenant did not pay the outstanding rent but did dispute the Notice on the fifth day after receiving the Notice.

The landlord seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding and seeks an Order of Possession to take effect as soon as possible.

The tenant seeks to cancel the notice on the grounds that the landlord owed the tenant money for some cleaning the work the tenant did in the unit at the start of the tenancy and for the loss of food from the tenant's freezer when the fridge freezer stopped working. The tenant does not dispute that she has not paid the rent for June and July, 2012 and states her roommates moved out and she could not afford to pay the rent.

The tenant seeks a Monetary Order for money owed or compensation for damage or loss to the sum of \$350.00. The tenant testifies that this is \$150.00 promised to the tenant to clean the unit at the start of the tenancy and \$200.00 for lost or spoilt food.

The landlord testifies that she did not have an agreement with the tenant at the start of the tenancy for the tenant to clean the unit. The tenant's sister was living in the unit prior to the tenant moving in and the tenant moved into the unit before the landlord had the opportunity to clean the unit. The tenant removed her own sister's belongings from the unit.

The landlord disputes the tenants claim for a loss of food totalling \$200.00. The landlord testifies that the fridge was faulty and was replaced by the landlord. The replacement fridge also developed a fault but the tenant has not informed the landlord of any loss of food.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Section 26 of the *Act* states:

*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.*

Consequently, it is my decision that the tenant has failed to pay rent for June and July, 2012 and the landlord is entitled to a Monetary Order to the sum of **\$1,900.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the Notice would be June 18, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days and although the tenant did file an application to dispute the Notice within five days the tenant has not presented any valid grounds that would enable me to cancel the Notice.

Consequently, the 10 Day Notice to End Tenancy for unpaid rent is upheld and the landlord has been issued with an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the tenants application to cancel the Notice to End Tenancy; as the Notice has been upheld this section of the tenants claim is dismissed.

With regard to the tenants application for a Monetary Order for money owed or compensation for damage or loss; I find the tenant has presented no evidence to support her claim that the tenant had an agreement with the landlord to be reimbursed the sum of \$150.00 to clean the unit at the start of the tenancy and no evidence to support her claim for \$200.00 for a loss of food. When one person's word contradicts that of the other the person making the claim has the burden of proof and must provide corroborating evidence to meet the burden of proof. When it is just one persons word against that of the other then the burden of proof is not met and this portion of the tenant's application is therefore dismissed.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

As the tenant has been unsuccessful with their claim the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,950.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without 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: July 06, 2012.

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Residential Tenancy Branch