



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes

*OPR, MNR, , CNR, FF*

### Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession for unpaid rent? In order to answer this question it must be determined:
- Has the Landlord established monetary entitlement to compensation for rent still outstanding?

### Issues to be decided: Tenant's Application

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

### Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on June 1, 2009 and the current rent is \$950.00 per month payable on the 1st day of each month and a security deposit of \$475.00 was paid. There were 2 previous tenancies between these two parties prior to this one, and a copy of the tenancy agreement for the previous tenancies was submitted into evidence. According to the tenant, no written tenancy agreement for this latest tenancy was signed.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence. The landlord testified that, in 2011, the tenant failed to pay rent for September, October, November, December and In 2012 the tenant failed to pay all of the rent owed for January, February, March, April, and June. The landlord stated that rent of \$950 per month was owed for 9 months. The landlord testified that the total debt accrued was for \$8,550.00. A Ten-Day Notice to End Tenancy was issued on June 15, 2012 and served on the tenant's roommate in person on the same day

The landlord is seeking a monetary order and an Order of Possession.

The tenant's testimony confirmed that the tenant did not pay the rent for several months when it was due. The tenant testified that the rent was available, but the landlord had neglected to debit the tenant's bank account over a substantial period of time. The tenant acknowledged that the rent demanded on the Ten Day Notice to End Tenancy for Unpaid Rent was not paid within the five days of receiving the Notice.

The tenant is requesting that the Ten-Day Notice be cancelled.

**Analysis:**

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent is in arrears.

I find that there is no dispute about the fact that the tenant owed arrears for at least nine months of rent and failed to pay the rent within 5 days of receiving the Notice. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid.

Therefore the Ten-Day Notice still remained in effect. I find that the Notice for unpaid rent is supported under the Act and section 46 of the Act was fully met. Although the tenant paid rent for the month of May 2012, and also paid a portion of rent owed for July 2012, there is still \$8,550.00 in rental arrears are outstanding.

Therefore I find that the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the rent when it was due and currently owes arrears. I find that the landlord is entitled to \$8,650.00, comprised of \$8,550.00 accrued rental arrears and the \$100.00 cost of the application.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord 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.

As I have found that the landlord is entitled to be reimbursed \$8,650.00, I order that the landlord retain the tenant's \$475.00 security deposit in partial satisfaction of the claim, and hereby issue a monetary order to the landlord for the remainder of \$8,175.00.

This order must be served on the tenant and, if unpaid, may be filed in Small Claims 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 23, 2012.

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Residential Tenancy Branch