



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, FF, MNR, MNSD, OPL, OPR

### Introduction

Some 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 and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

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.

The tenant's application is an application to cancel a notice to end tenancy that was given for cause, a request for a monetary order for \$5,000.00, and a request for an order for the landlord to comply with the tenancy agreement.

The landlord's application is a request for an order of possession based on a notice to end tenancy for nonpayment of rent, and on a notice to end tenancy for landlord use, a

request for a monetary order for \$1490.88, a request to retain the security deposit towards the claim, and a request recovery of the \$50.00 filing fee.

I deal first with the notice to end tenancy that was given for nonpayment of rent.

### Background and Evidence

The landlord testified that:

- The tenant failed to pay the November 2012 rent in the amount of \$850.00 and therefore on November 2, 2012 the tenant was served with a 10 day notice to end tenancy for nonpayment of rent.
- The tenant has also failed to pay her share of the utilities totaling \$222.23.
- The tenant has not complied with the notice to end tenancy nor has the tenant paid any further rent.

The landlord is therefore requesting an order of possession for as soon as possible, and a monetary order as follows:

Rent outstanding for November 2012	\$850.00
Utilities outstanding	\$222.23
Filing fee	\$50.00
Total	\$1122.23

The tenant testified that:

- She did not pay the November 2012 rent, because she was hoping to move by December 1, 2012.
- The landlord had given her a two month notice to end tenancy that ended the tenancy at the end of December 2012, however since she was planning to vacate at the end of November 2012, she chose to not pay the rent and kept it as compensation for having received a two month notice.
- She has not given the landlord any notice to move earlier than the date given on a notice to end tenancy that she received from the landlord.

- She also did not pay the rent because the landlord sent over his agent to collect the rent and she did not feel safe paying the rent to the landlord's agent even though she knows him.

### Analysis

It is my finding that the tenant did not have the right to withhold rent for the month of November 2012.

When the tenant receives a 2 month notice to end tenancy for landlord use, they do have the right to withhold the their last month's rent as compensation, however in this case, since the tenant has not given the landlord any notice that they are moving earlier than the notice specifies, the last month would be December 2012.

Further since the tenant has admitted that she knows the landlords agent, there is no valid reason for her not to have paid her rent to the landlords agent when requested to do so.

Therefore since the tenant has withheld November 2012 rent without the authority to do so, I will not set aside the 10 day notice to end tenancy and this tenancy ends pursuant to the notice.

Since the end of tenancy date has already passed I will be issuing an order of possession to the landlord, and an order for the outstanding November 2012 rent and order recovery of the landlords filing fee.

The information that the landlord has provided with regards to utilities is insufficient for me to make a decision on any order regarding utilities. I therefore dismiss with leave to reapply the claim for outstanding utilities.

Since this tenancy is ending pursuant to a 10 day notice for nonpayment of rent, there is no need for me to deal with the tenant's dispute of the two month notice to end tenancy for landlord use, and request for compensation.

### Conclusion

#### Tenant's application

The tenant's application is dismissed without leave to reapply.

#### Landlord's application

I have issued an order of possession that is enforceable two days after service on the tenant.

Have issued a monetary order in the amount of \$900.00

The landlords claim for outstanding utilities 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: November 22, 2012.

---

Residential Tenancy Branch

