



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, OLC, ERP, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For an order of Possession; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent (the "notice");
2. To have the landlord comply with the Act;
3. To have the landlord make emergence repairs; and
4. To recover the cost of filing the application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to reapply.

### Issue(s) to be Decided

Should the notice to end tenancy issued on January 2, 2013, be cancelled?

Should an order of possession be granted?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on September 1, 2011. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenant.

The tenant acknowledged receiving the notice on January 2, 2013, with an effective vacate date of January 12, 2013. The tenant acknowledged the amount of failed to pay rent in the notice was \$3,200.00. The tenant stated that he is refusing to pay the landlord any rent as he believes the premise is inhabitable.

The landlord stated no rent has been paid for December 2012 and January 2013, and seeks an order of possession and a monetary order for unpaid rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

#### *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.*

***[Emphasis added.]***

The evidence of the tenant was rent for December 2012 and January 2013, have not been paid and that he is refusing to pay any rent as the premises in inhabitable.

The Act stated a tenant must pay rent when due under the tenancy agreement, unless the tenant has a right under this Act to deduct all or part of the rent, such as an order made by an Arbitrator giving the tenant permission to keep all or part of the rent.

In this case, the tenant did not have any authority under the Act, to withhold any portion of the rent. Therefore, I find the tenant has violated section 26 of the Act, when he failed to pay rent as required by the tenancy agreement and the Act.

The evidence of the tenant was that he received the notice on January 2, 2013. The tenant filed the application to dispute the notice within five days, however, the tenant has admitted he is refusing to pay any rent. Therefore, I find the tenant's application to dispute the notice for unpaid rent has no merit.

As a result the notice to end tenancy issued on January 2, 2013, is a valid notice. I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$3,250.00** comprised of unpaid rent for December 2012, January 2013 and the \$50.00 fee paid by the landlord for this application. I grant the landlord an order under section 67 for the above balance.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenant's application is dismissed.

The tenant failed to pay the outstanding rent. The landlord is granted an order of possession.

The landlord is granted a monetary order for unpaid rent in the above balance.

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: January 30, 2013

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Residential Tenancy Branch

