



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, CNC, MNR, MNDC, OPR, OPC, MND, MNR

### Introduction

A substantial amount of documentary evidence, photo 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 the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

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 landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issues to be dealt with together.

Therefore on the landlord's application I will deal with the request for an Order of Possession based on the notices to end tenancy, the request for an Order for outstanding rent, and a request for recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply. On the tenants application I will deal with the request to cancel the notices to end tenancy and the request for recovery of the filing fee and I dismiss the remaining claims with liberty to re-apply.

10 day Notice to End Tenancy

Background and Evidence

On April 4, 2013 the landlord personally served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent.

The landlord testified that:

- The tenant deducted \$180.00 from the April 2013 rent.
- The tenant paid the rent for two months on March 12, 2013, but refused to pay \$180.00 deducting the money for things he had purchased without getting the authorization to do so.
- Therefore when April 2013 rent became due, and the \$180.00 was still outstanding, he gave the tenant a 10 day Notice to End Tenancy.
- This \$180.00 has still not been paid and therefore he's requesting an Order of Possession for as soon as possible and an Order for the outstanding \$180.00.

The tenant testified that:

- The landlord fully agreed to the \$180.00 deduction from the rent, and even issued a handwritten receipt stating why the deductions were made.
- A copy of that receipt is labeled Exhibit 7, and you can clearly see that the landlord is well aware of the deduction and the reasons for it.
- He is therefore asking that the 10 day Notice to End Tenancy be canceled.

Analysis

It's my finding that the landlord was fully aware of the \$180.00 deduction and the reasons for it when the receipt was given on March 12, 2013.

The landlord makes no mention on that receipt that there is still \$180.00 outstanding, and in fact at the bottom of the receipt it says total amount paid for March and April at \$460.00 per month. And then gives a breakdown showing \$180.00 expenses being deducted.

Therefore it's my finding that there is no rent outstanding for the month of April 2013 and I therefore set aside the 10 day Notice to End Tenancy.

1 month Notice to End Tenancy

Background and Evidence

On March 17, 2013 the landlord personally served the tenant with a one-month Notice to End Tenancy.

The landlord testified that:

- The tenant moved the hose leading from the sump pump when he had been specifically told not to move it.
- The tenant had previously complained about noise from the sump pump and asked about moving the hose to the backyard, however we specifically told him he was not to move it and that if the noise bothered him he should be looking for somewhere else to live.
- On March 13, 2013 the tenant spoke to the other tenant in the rental property and was very angry, stating that the sump was making noise and he was going to change the hose to the backyard. The other tenant warned him not to do so however he didn't listen and move the hose to the backyard anyway. (I have provided a sworn witness statement from the other tenant)
- On March 14, 2013 he got a call from the tenant stating that there was a leak into the rental unit, and when they investigated they discovered that when the tenant moved the hose from the sump pump, the pump had been knocked over and as a result ceased functioning.
- The tenant admitted in front of me and my brother and the second tenant that it was his fault and he shouldn't have moved the pump, apologizing many times.
- The flooding caused by the tenant's actions caused extensive damages and will result in extensive costs for cleanup and repairs.
- The tenant has also been smoking marijuana in the rental unit on a regular basis, making it difficult for those in the rest of the rental property to breathe and causing health issues.
- He therefore asks that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- At no time has he moved the hose to the sump pump, and in fact it was the landlord and the other tenant in the rental property, who were working on the sump pump and caused the problem.
- The landlord told me that he and the other tenant had opened the barrel to have a look at the water pump. He further explained that they didn't like the way the

water pump was resting in so they adjusted the pump to their liking including adjusting the really long hose.

- It was just a couple of days after the landlord had adjusted the pump and the hose that the flood occurred.
- When I asked the landlord and the other tenant why the pump stopped working they told me that when they adjusted the water pump they had left some of the hose in the barrel which had floated up and blocked the lever on the water pump causing the water pump to not turn on.
- This story of me moving the pump has been totally fabricated by the landlord and the other tenant to try and transfer the blame for the damage to me.
- Further there isn't any significant damage, because I cleaned up the water and dried of the carpets when the flood occurred, so I've actually save the landlords money.
- I'm therefore asking that this Notice to End Tenancy be canceled and this tenancy continues.

### Analysis

It is my decision that the landlords have not met the burden of proving that the flood at the rental property was a result of any willful or negligent actions on the part of the tenant.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is basically the applicant's, and the applicant's brother's word, against that of the respondent, and it is my finding that that is not sufficient to meet the burden of proving the claim.

Further, although the applicants have supplied a sworn statement from the other tenant in the rental property, that tenant was not present at today's hearing to be cross examined, and therefore I put more weight on the testimony of the respondent in this matter.

Further it's also my finding that the applicants have not shown that there is extraordinary damage to the rental property. The applicants have supplied one unsigned quote to repair damages; however that quote does not even give a breakdown of what damages exist.

As far as the marijuana smoking issue is concerned, the landlords have provided no evidence of illegal activity or any evidence that the tenant is ever been charged with illegal activity. The smoke may be bothering other occupants of the rental property, however the landlord did not include that section in the Notice to End Tenancy.

Therefore it's my decision the one-month Notice to End Tenancy is canceled and this tenancy continues.

### Conclusion

Both the one-month Notice to End Tenancy dated March 17, 2013, and the 10 day Notice to End Tenancy dated April 4, 2013 are hereby canceled and this tenancy continues.

The landlords request for a Monetary Order for \$180.00 in outstanding rent is dismissed without leave to reapply.

The landlord's application for an Order of Possession is dismissed.

I further Order that the landlord bear both the cost of their own filing fee, and the cost of the tenants filing fee. The tenant may therefore make a one-time deduction of \$50.00 from future rent payable to the landlords.

As stated previously, the remainder of the landlord and tenant's claims for monetary compensation are 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: April 25, 2013

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Residential Tenancy Branch

