



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MEICOR PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **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 an order to cancel the notice to end tenancy for rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

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

- Is the landlord entitled to an order of possession and a monetary order for unpaid rent based on the Ten Day Notice to End Tenancy for Unpaid Rent ?

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

- Is the tenant entitled to an Order to cancel the Notice to End Tenancy for Unpaid Rent?

## **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started on January 1, 2013 and the current rent is \$700.00 per month. No security

deposit was paid. The tenancy agreement indicates that the rent is due on the 30<sup>th</sup> day of the month preceding each rental period. However, according to the tenant, they had made specific arrangements with the landlord to pay their rent in two installments each month, half on the 5th day and the other half on the 20th day of each month.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence. The landlord testified that when the tenant failed to pay the rent on the 1<sup>st</sup> day of the month of August, the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent on August 2, 2013 and served it in person on the same day.

The landlord testified that the tenant never did pay rent for August, nor for September 2013. The landlord is seeking both a monetary order and an Order of Possession.

The tenant pointed out that they had offered the landlord a partial payment of rent in the amount of \$350.00 after they received the Ten Day Notice to End Tenancy for Unpaid Rent, but the landlord refused to accept it. The tenant testified that that they have the funds for all of the rental arrears available now and are ready to pay to reinstate their tenancy. The tenant is requesting that the Ten-Day Notice be cancelled.

The landlord testified that they did not refuse to accept money allegedly offered by the tenant after the Notice was issued. The landlord stated that they are entitled to be paid all of the rental arrears, but are not willing to waive their request for an Order of Possession and reinstate the tenancy agreement. The landlord pointed out that, under the Act, the tenant had 5 days after August 2, 2013, in which to satisfy the rental arrears to automatically cancel the Notice, but the tenant failed to do so.

The landlord re-iterated that they do not wish to re-instate the tenancy and are seeking an Order of Possession and a monetary order for two months rent.

### **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 the tenant owed arrears for August 2013 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 in full within the 5-day statutory deadline.

I accept the landlord's testimony that the tenant did not attempt to pay all of the arrears within 5 days. Even if I accept the tenant's testimony that they offered to pay \$350.00 towards the arrears, this offer only represented a portion of the rental arrears owed for August 2013.

Therefore I find that there is no basis to cancel the Ten-Day Notice and the Notice still remains in effect. I find that the termination of this tenancy for unpaid rent is supported under the Act and the criteria under section 46 of the Act was fully met.

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 the application 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 rental arrears, I find that section 26 of the Act states rent must be paid when due, whether or not the landlord complies with the Act. 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 \$1,450.00, comprised of \$1,400.00 accrued rental arrears for August and September 2013 and the \$50.00 cost of the application.

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.

I hereby issue a monetary order to the landlord for \$1,450.00. 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.

### **Conclusion**

The landlord is successful in the application and is granted a monetary order and an Order of Possession. The tenant's application seeking to have the Ten Day Notice cancelled is dismissed without leave.

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: September 12, 2013

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Residential Tenancy Branch

