



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, FF, O, OPR, MNSD

### Introduction

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.

### Landlord's application

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$2600.00, and a request for recovery of the \$50.00 filing fee. The landlord is also requesting an Order to keep the full security deposit towards the claim.

### Tenant's application

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for a Monetary Order for \$1950.00 for loss of use and enjoyment.

A substantial amount of 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 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

I will not deal with all the issues that the tenant has put on her application. For claims to be combined on an application they must be related.

Not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel the Notice to End Tenancy, and recovery of the \$50 filing fee and I dismiss the monetary claim with liberty to re-apply.

Therefore the issues I'm dealing with today are:

- Whether or not to cancel a Notice to End Tenancy that was given for nonpayment of rent.
- Whether or not to issue an Order of Possession.
- Whether or not the landlord has established a monetary claim for outstanding rent.

Background and Evidence

Both sides agree that the present rent for this rental unit is \$650.00 per month.

The landlord testified that:

- The tenant failed to pay the May 2013, and June 2013 rent and after giving the tenant extra time to pay the rent, it became obvious he was not going to and therefore on September 29, 2013 the tenant was personally served with a 10 day Notice to End Tenancy for nonpayment of rent.
- The tenant has failed to pay that outstanding rent, and failed to comply with the Notice to End Tenancy.
- The tenant eventually did pay \$600.00, however when you factor in the October 2013 rent, and November 2013 rent, there is still a total of \$2000.00 in rent outstanding.
- He is therefore requesting an Order of Possession for as soon as possible and an order for that outstanding rent.

The tenant testified that:

- She had a loss of quiet enjoyment of her rental unit, and therefore she has refused to pay the rent for the months of May 2013, and June 2013.
- She has lived in the rental unit since 2002, and thought she had a good working relationship with the landlord. She therefore believed that the landlord would allow her to withhold the rent for the months in question.
- The landlord did give her a Notice to End Tenancy on September 29 2013, and she filed her dispute of that notice on October 1, 2013.
- She withheld \$50.00 from her October 2013 rent as well, to cover filing fee for her dispute resolution application.
- She has also withheld the rent for the month of November 2013, because the landlord also served her with a two month Notice to End Tenancy for landlord use, which requires that she be compensated the equivalent of one month's rent.

She therefore believes that she does not owe any rent to the landlord and that the Notice to End Tenancy should be canceled and the landlord's application dismissed.

### Analysis

It is my finding that the tenant did not have the right to unilaterally withhold her rent without first receiving an Order from an Arbitrator allowing her to do so, and by withholding her rent she has put her tenancy in jeopardy.

Since the tenant did not have the right to withhold her rent, the landlord's Notice to End Tenancy for nonpayment of rent is a valid Notice to End Tenancy and I will not cancel it and this tenancy ends as a result of that notice.

The landlord also has the right to an Order for the outstanding rent for the months of May 2013, and June 2013 and I therefore allow that portion of the landlords claim.

Further, the tenant did not have the right to withhold \$50.00 to cover a filing fee unless she had received an order from an Arbitrator allowing her to do so, and therefore it's my finding that that rent is also outstanding.

Further, although the landlord did give the tenant a two-month Notice to End Tenancy for landlord use, this tenancy is ending as a result of the 10 day Notice to End Tenancy, and there is no requirement for the landlord to pay compensation if the tenancy ends due to a 10 day Notice to End Tenancy. Therefore the tenant is also liable for the outstanding November 2013 rent.

I will not allow the tenant's application for recovery of her filing fee, as her application has been dismissed.

I will allow the landlords request for recovery of his filing fee however, as I have allowed the landlords full claim.

### Conclusion

The tenant's application to cancel a Notice to End Tenancy and for recovery of the filing fee is dismissed without leave to reapply.

The tenant's \$1950.00 monetary application is dismissed with leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have allowed the landlords full reduced monetary claim of \$2050.00 and I therefore order that the landlord may retain the full security deposit of \$275.00, plus interest of \$9.75 for a total of \$284.75, and I've issued a Monetary Order in the amount of \$1765.25.

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 06, 2013

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Residential Tenancy Branch

