



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNR,RR

For the landlord – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent; for a Monetary Order for the cost of emergency repairs; and for an Order to reduce rent for repairs, services or facilities agreed upon but not provided. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord and a translator for the landlord, attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord only provided documentary evidence to the residential Tenancy Branch and not the tenant. Consequently, the landlord's documentary evidence has not been considered.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that 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 tenant's application for to cancel the 10 Day Notice to End Tenancy for unpaid rent and I will not deal with the remaining sections of the tenants claim at this hearing.

### Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

- If not is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties agree that this month to month tenancy started on or about May 28, 2012. No written tenancy agreement is in place however the parties agree that the tenant would rent this unit for \$700.00 per month due on the 1<sup>st</sup> day of each month.

The landlord testifies that the tenant owes rent for the following months:

December, 2012 - \$200.00

March, 2013 - \$700.00

April, 2013 - \$700.00

May, 2013 - \$700.00

June, 2013 - \$500.00

July, 2013 - \$300.00

August, 2013 - \$700.00

September, 2013 - \$400.00

October, 2013 - \$450.00

November, 2013 - \$700.00

December, 2013 - \$700.00

January, 2014 - \$700.00

The total amount of unpaid rent is now \$6,750.00. The landlord testifies that the tenant kept making promises to pay the outstanding rent and issued cheques which were not honoured at the tenant's bank. The landlord testifies that he served the tenant with a 10 Day Notice issued on October 27, 2013 and served in person to the tenant on November 05, 2013. This Notice informed the tenant that she owed \$4,850.00 in unpaid rent. The landlord testifies that the tenant's last rent payment was \$250.00 on October 06, 2013 and the landlord meet the tenant and showed her a document showing how much rent the tenant owed. The landlord testifies that the tenant signed this document to agree to pay the landlord the amount of \$4,600.00. The landlord testifies that since serving the tenant the 10 Day Notice the tenant has paid no rent and the landlord seeks an Order of Possession to take effect as soon as possible.

The tenant disputes the landlord's claim. The tenant agrees that she did sign a document that the landlord showed the tenant at her back door about outstanding rent being \$4,600.00. The tenant testifies that she did not agree to the figures and only signed it to get rid of the landlord. The tenant agrees this was on October 06, 2013 when she paid the landlord \$250.00 for Octobers rent.

The tenant disputes that she owes this much rent to the landlord; the tenant testifies that she did provide the landlord with rent cheques and agrees some of these did go NSF however the tenant testifies she made it up with cash payments. The tenant testifies that she only ever received one rent receipt from the landlord for October's rent. The tenant agrees she owes \$700.00 for June, 2013, half a month's rent for July, 2013 and then paid no rent from November, 2013 to January, 2014. The tenant testifies that the landlord went to India and the tenant paid the landlord's daughter and son \$300.00 and \$100.00 in cash in September, 2013.

The tenant testifies that she had no stove, or heat and the unit had mould. The tenant seeks to recover an amount for emergency repairs of \$1,650.00. However the tenant has provided no evidence to support her claim that she followed s. 33 of the Residential Tenancy Act concerning emergency repairs.

The landlord disputes the tenant's claim for emergency repairs.

The landlord agrees the tenant paid \$300.00 rent to his daughter and son in September, 2013 but disputes the tenant paid a further \$100.00. The landlord states that he is willing to reduce his claim to \$3,200.00 for unpaid rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

*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.*

I have no evidence before me that the tenant has a right to deduct all or part of the rent. The tenant has provided no evidence to show that emergency repairs were conducted by the tenant or how much was spent or deducted from the rent for emergency repairs. This section of the tenant's claim is therefore dismissed. Furthermore, the tenant has the burden of proof to show that she has paid the rent to the landlord for the months the tenant is stating were paid. The tenant has provided no corroborating evidence to show rent was paid and therefore I find the landlord is entitled to recover rent arrears. The landlord has reduced his claim from \$6,750.00 to \$3,200.00 I find therefore the landlord is entitled to a Monetary Order for **\$3,200.00** pursuant to section 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice was deemed served on November 05, 2013 and the tenant applied to cancel the Notice within five business days. However, the tenant did not pay the outstanding rent within five days and as the landlord has successfully shown that rent is outstanding, I hereby grant the landlord an Order of Possession for two days after service upon the tenant, pursuant to s. 55 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

#### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,250.00**. The Order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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.

The tenant's application to cancel the 10 Day Notice to End Tenancy dated October 27, 2013 is dismissed without leave to reapply.

The tenant is at liberty to reapply for any compensation for repairs or loss of a facility not dealt with at this hearing.

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 10, 2014

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Residential Tenancy Branch

