



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, OLC, OPR, OPC, MNR, MNSD.

### Introduction

In the first application the tenant Ms. C.H. seeks to cancel a ten day Notice and a one month Notice to End Tenancy. In addition, she seeks an order that the landlord comply with the law regarding noise and regarding entry to her suite. By hearing time the tenant had decided to leave whether the eviction Notices were valid or not. Similarly, as she is leaving, she no longer requires a ruling or order about whether the landlord is complying with the law. I was agreed that the landlord will have an order of possession effective at one o'clock in the afternoon of Friday, January 10, 2014.

In the second application the landlord seeks an order of possession and a monetary award of \$350.00 for unpaid rent. He has obtained the order of possession as per the previous paragraph. At hearing the landlord noted that since making the application in mid-November he has continued to lose rent or rental income from the premises. There is no dispute but that December rent and at least half of November's rent have not been paid, nor will the landlord likely receive money from the tenant for January 2014. The landlord has not amended his application to increase his claim and the tenant opposed him being allowed to amend it at this hearing, claiming she had some defence for the non-payment. I declined to allow any amendment to the landlord's claim. He is free to re-apply to attempt to recover the additional loss, if any.

### Issue(s) to be Decided

Is the landlord owed \$350.00?

### Background and Evidence

The rental unit is a one bedroom basement suite in the landlord's house. The tenancy started in July 2013. There is a written tenancy agreement between the parties

confirming the monthly rent to be \$700.00. The tenants paid a \$350.00 security deposit the landlord still holds.

The tenant Mr. D.D. apparently left in the latter part of August. He did not provide a forwarding address. He has not been served in accordance with s. 88 of the *Residential Tenancy Act* (the “Act”) by personal service or registered mail service either an address at which he resides or a forwarding address.

While Mr. D.D. was there the rent was being paid directly from the government welfare or disability office; \$350.00 for each tenant. After Mr. D.D. left, Ms. C.H.’s government cheque continued to go to the landlord and she paid what had formerly been Mr. D.D.’s share by cash. The parties agree she made a \$350.00 cash payment to top-up the September rent. The tenant Ms. C.H. swears she made an October cash top-up of \$350.00 as well. The landlord denies it.

In November or perhaps late October, the tenant Ms. C.H.’s government cheque of \$350.00 arrived for the November rent. The landlord claims to have applied it to the \$350.00 balance remaining for October. The tenant says she did not pay a cash top-up for the November rent because the landlord had turned the heat down. She felt she was entitled to withhold it until this hearing.

### Analysis

The burden of proof of payment of a debt is initially on the debtor. In matters involving payment of rent, the tenant is in the shoes of the “debtor” and must prove payment. The Act, s.26(2), requires that a landlord provide a receipt for cash payments. That provision has been enacted specifically so that tenants making cash payments to their landlords have the proof a receipt provides. Where a tenant swears a cash payment was made and a landlord swears it was not, then without some further evidence in the nature of corroboration and where there is no other basis to prefer the tenant’s testimony over that of the landlord, the tenant will have failed to satisfy the burden of proof.

That is the case here. I find tenant made a cash payment in September but not in October.

Based on the landlord’s evidence, at the time of his application November 15<sup>th</sup> he was owed the entire November rent of \$700.00. I am constrained by his application to award him no more than the claimed \$350.00 as so I do so, stating only that his free to re-apply for what might be the balance of November rent and losses thereafter.

I grant the landlord a monetary award of \$350.00 plus the \$50.00 filing fee for his application. I authorize the landlord to retain the \$350.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant Ms. C.H. for the remainder of \$50.00.

Conclusion

There will be an order of possession effective at one o'clock on January 10, 2013.

The landlord will have a monetary order against the tenant Ms. C.H. in the amount of \$50.00.

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 06, 2014

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Residential Tenancy Branch

