



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, OPR, CNR

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

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 outstanding rent, and a request for recovery of the \$50.00 filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy, and a request for recovery of the \$50.00 filing fee.

Some 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

The issues are whether or not there is any rent outstanding, and whether or not to cancel or uphold a Notice to End Tenancy.

### Background and Evidence

Both sides agree that:

- This tenancy began on October 1, 2013 with a monthly rent of \$1850.00.
- On November 8, 2013 the landlords served the tenant with a 10 day Notice to End Tenancy, on the government approved form, for nonpayment of rent.

The landlords testified that:

- The tenant gave him postdated cheques for the rent, however the November 2013 rent cheque was returned due to insufficient funds.

- He therefore served the tenants with a Notice to End Tenancy; however the tenant has failed to comply with that notice, and now the December 2013 rent cheque has also been declined due to insufficient funds.
- He is therefore requesting an Order of Possession for as soon as possible and a Monetary Order for the outstanding November 2013 and December 2013 rent.

The tenant testified to that:

- She originally moved into the rental unit with her boyfriend, however he subsequently vacated.
- She does not dispute the fact that the postdated cheque for the November 2013 rent was not honored by the bank, however on November 11, 2013 she paid the landlord \$1850.00 cash to cover the November 2013 rent.
- She also told the landlord not to try and cash any more of the postdated cheques, and subsequently her brother paid her full December 2013 rent in cash on December 2, 2013.
- The landlord told her that she would be issued a receipt for the cash; however no receipt has ever been given for either payment.
- She is therefore requesting that the Notice to End Tenancy be canceled and that this tenancy continues.

In response to the tenant's testimony the landlords testified that:

- They have never received any cash payments whatsoever from the tenant or the tenant's brother.

### Analysis

The burden of proving a claim lies with the person making the claim and when it is just the that persons word against that of the other, that burden of proof is not met.

In this case the tenant is making the claim that she and/or her brother made cash payments to the landlord for the November 2013 rent, and December 2013 rent; however she has provided no evidence in support of this claim.

The landlord denies ever receiving any cash payments from the tenant or the tenant's brother, and therefore in the absence of any supporting evidence it is my finding that the tenant has not met the burden of proving that any cash payments have been made to the landlord.

Therefore I will not cancel a Notice to End Tenancy.

I allow the landlords request for an Order of Possession.

I also allow the landlords request for the outstanding rent for the months of November 2013 and December 2013, and for recovery of the landlords filing fee

Conclusion

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

I have issued a Monetary Order for outstanding rent totaling \$3700.00, and the filing fee of \$50.00, for a total of \$3750.00.

The tenant's application is dismissed in full without 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: January 02, 2014

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Residential Tenancy Branch

