



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 an order of possession pursuant to Section 55, a monetary order for rent owed, pursuant to Section 67 and 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, an order to force the landlord to make repairs and emergency repairs and an order to force the landlord to provide services and facilities required by law.

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 for Unpaid Rent?
- Should the landlord be order to complete repairs and supply services and facilities required by law?

## **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started on August 7, 2013 and the rent is \$950.00 per month payable on the 1st day of

each month. A security deposit of \$475.00 was paid. The landlord testified that as of November 1, 2013, the tenant agreed to increase his rent payments to \$1,000.00.

No written tenancy agreement is in evidence. The landlord testified that the tenant paid \$400.00 in advance for rent for the month of January 2014, but did not pay the remaining \$600.00 owed and on January 8, 2014, a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The landlord testified that no further payments of rent were received from the tenant. The landlord is seeking an Order of Possession and monetary order for \$600.00 rent for January 2014 and \$1000.00 for February 2014.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence.

The tenant argued that the landlord's application clearly indicates that the tenant paid \$400.00 on December 19, 2013 and "*with balance of \$600 pd on Jan 1<sup>st</sup>*".

The landlord testified that this statement was meant to indicate that the \$600.00 was due to be paid on January 1, 2014.

The tenant testified that he also made a partial payment of \$140.00 towards January rent later in December. The tenant pointed out that this is evidenced by a handwritten note from the tenant, placed in evidence by the landlord.

The tenant's testimony confirmed that the tenant did not pay the rent for February 2014.

The tenant is requesting that the Ten-Day Notice be cancelled.

**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 applicable rent for the unit had to remain at the original amount of \$950.00 as the \$50.00 rental increase was not implemented in accordance with the Act, regardless of which party had initiated it.

I find that the tenant overpaid rent by \$50.00 in November 2013 and \$50.00 in December 2013.

I accept that the tenant paid \$400.00 towards rent on December 19, 2013 and, on a balance of probabilities, likely paid another \$140.00 towards January rent later in December 2013.

Given the above, I find that, as of January 8, 2014, the tenant was in rental arrears for \$310.00, after subtracting the \$140.00 allegedly paid in late December and the tenant's \$100.00 overpaid rent from the \$550.00 outstanding arrears for January 2014.

Therefore I find that the Ten-Day Notice cannot be cancelled and remains in effect. I find that the Notice for unpaid rent is supported under section 46 of the Act. Accordingly, the portion of the tenant's application seeking to cancel the Notice must be dismissed.

I find that the landlord is entitled to an Order of Possession based on the Notice.

In regard to the tenant's application seeking repairs, I find that the issue of repairs is now moot as the tenancy is ending. Therefore I find that the tenant's application must be dismissed in its entirety.

I find that the landlord is entitled to monetary compensation in the amount of \$1,310.00, comprised of \$310.00 owed for rental arrears for January 2014, \$950.00 owed for February 2014 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$475.00 security deposit in partial satisfaction of the monetary claim and hereby grant the landlord a Monetary Order for the remainder of \$835.00. This order must be served on the tenant and may be enforced through Small Claims Court if unpaid.

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 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 to End Tenancy for Unpaid Rent cancelled is dismissed without leave and the other orders being sought by the tenant are moot..

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: February 24, 2014

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Residential Tenancy Branch

