



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's Application: CNR  
Landlord's Application: OPR, MNR, FF

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent. The tenant did not appear at the hearing despite leaving the teleconference call open for 25 minutes.

The landlord testified that she was not served with the tenant's Application for Dispute Resolution or evidence and that she discovered the tenant had filed an Application upon contacting the Residential Tenancy Branch.

The landlord testified that she served her Application for Dispute Resolution upon the tenant by registered mail sent to her at the rental unit address on February 7, 2014. The landlord provided a copy of the registered mail receipt, including tracking number, as proof of service. I was satisfied the tenant was sufficiently served with the landlord's Application for Dispute Resolution in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

Since the tenant filed to dispute a 10 Day Notice to End Tenancy and did not appear at the hearing to present a basis for cancellation of the 10 Day Notice that was the subject of both Applications, I dismissed the tenant's Application without leave.

The landlord requested her Application for Dispute Resolution be amended to withdraw her request to retain the security deposit as the landlord submitted the tenant had not paid a security deposit. I made no finding as to whether the tenant paid a security deposit but did amend the application. If in fact, the tenant did pay a security deposit, any such deposit shall remain in trust, to be administered in accordance with section 38 of the Act.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?

### Background and Evidence

The parties executed a written tenancy agreement on November 1, 2013 for a month-to-month tenancy starting on November 1, 2013 for the monthly rent of \$665.00 due on the 1<sup>st</sup> day of every month.

The tenant failed to pay rent for January 2014 and on January 23, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), in the presence of a witness. The 10 Day Notice indicates rent of \$665.00 was outstanding as of January 1, 2014 and has a stated effective date of February 1, 2014. The tenant filed to dispute the 10 Day Notice but the tenant's application has been dismissed as explained above.

The landlord testified that the tenant did not pay the outstanding rent after receiving the 10 Day Notice. Nor, did the tenant present any monies to the landlord for the months of February and March 2014 yet the tenant continued to occupy the rental unit. The tenant has not yet returned possession of the rental unit to the landlord and the tenant was last seen at the rental unit last week.

The landlord is seeking compensation for unpaid and/or loss of rent for the months of January, February and March 2014.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides for very limited circumstances when a tenant may withhold rent. Where a tenant does not pay rent that is due the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

Upon receipt of a 10 Day Notice, the tenant has five days to pay the outstanding rent to nullify the Notice. Alternatively, the tenant may file to dispute the Notice, which the tenant did in this case.

Where a tenant files to dispute a 10 Day Notice the tenant must present a legal basis for withholding rent or a reason to otherwise find the Notice invalid. In this case, the tenant but did not present a legal basis for withholding rent or a reason to find the Notice otherwise invalid and the tenant's request to cancel the 10 Day Notice was dismissed.

In light of the above, I find the tenancy ended for unpaid rent as of the stated effective date of February 1, 2014 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for January 2014 and since the tenant remained in possession of the rental unit without a legal basis for doing so, I further award the landlord loss of rent for the months of February 2014 and March 2014. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order in the total sum of \$2,045.00 [calculated as: \$665.00 x 3 months + \$50.00 filing fee.]

### Conclusion

The tenant's application has been dismissed.

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the total amount of \$2,045.00 to serve and enforce as necessary.

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: March 25, 2014

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Residential Tenancy Branch

