



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes** *OPR, MNR, CNR, CNC, FF.*

## **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause.

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 to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause ?

## **Background and Evidence**

Based on the testimony of both parties, the background is as follows. The tenancy started on November 1, 1013 and the current rent is \$800.00 per month payable on the 1st day of each month and a security deposit of \$425.00 was paid. A copy of the tenancy agreement was submitted into evidence.

A copy of the Ten Day Notice to End Tenancy for Unpaid Rent was also in evidence showing that the tenant is in arrears as of February 2, 2014, for \$800.00. The landlord testified that the tenant failed to pay rent for February 2014 and also for March 2014 accruing arrears of \$1,600.00, which is being claimed.

The landlord is seeking a monetary order and an Order of Possession.

The tenant's testimony confirmed that the tenant paid the rent for January 2014 after the landlord had already served a Ten Day Notice to End Tenancy for Unpaid Rent in January, but failed to pay the rent for February on February 1, 2014. The tenant acknowledged that they and did not pay the arrears owed for February within 5 days to cancel the Notice. The tenant testified that they also failed to pay rent for the month of March 2014 based on advice they allegedly received from the Residential Tenancy Branch.

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 there is no dispute about the fact that the tenant owed arrears for rent and failed to pay the rent within 5 days of receiving the Notice. Payment of the rent within five days of receiving the Notice would have served to automatically cancel the Notice. In this instance the debt was not paid and the Notice was therefore still in effect.

I find that the Notice for unpaid rent is supported under the Act and the criteria for ending the tenancy under section 46 of the Act was met.

Therefore I find that the Ten-Day Notice cannot be cancelled. Given the above, I find that the tenant's application requesting an order to cancel the Ten-Day Notice has no merit and must be dismissed.

Based on the testimony and evidence of both parties, I find that the landlord is entitled to an Order of Possession under the Act.

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

I find that the tenant did not pay the rent when it was due and currently owes arrears in the amount of \$1,600.00. I find that the landlord is entitled to \$1,650.00, comprised of \$1,600.00 accrued rental arrears and the \$50.00 cost of the application.

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.

As I have found that the landlord is entitled to be reimbursed \$1,650.00, I order that the landlord retain the tenant's \$425.00 security deposit in partial satisfaction of the claim, and hereby issue a monetary order to the landlord for the remainder of \$1,225.00.

This order must be served on the tenant and, if unpaid, may be filed in Small Claims 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.

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 26, 2014

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Residential Tenancy Branch

