



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the tenant and the landlords.

The tenant's application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a notice to end tenancy; and
2. To cancel a notice to end tenancy for unpaid rent.

The landlords' application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The landlord's agent appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

### Tenant's application

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "notice"), issued on March 13, 2014.

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed and the landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court.

Landlord's application

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

Background and Evidence

The tenancy began on July 2013. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenant

The landlord's agent testified that the tenant was having difficulties paying rent and by March 13, 2014, the tenant was in rent arrears in the amount of \$985.00. The agent stated the tenant was served with a notice to end the tenancy.

The landlord's agent testified since the notice was issued the tenant failed to pay all rent owed for April 2014. The agent stated that they received a partial payment of amount of \$500.00, leaving a balance due of \$1,000.00 for April rent. The agent stated the tenant did not pay any rent for May 2014.

The landlord seeks to recover unpaid rent for January, February, March (\$985.00), April (\$1,000.00) and May 2014 (1,500.00), in the total amount of \$3,485.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord's agent was that the tenant was having difficulties paying rent and was served with a notice to end the tenancy for unpaid rent for January, February, and March 2014. The evidence was that since the notice was issued the tenant has further failed to pay all rent for April and has paid no rent for May 2014. I find the tenant has have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlords.

I find that the landlord has established a total monetary claim of **\$3,535.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,785.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The tenant's application is dismissed.

The landlords are granted an order of possession. The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: May 12, 2014

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Residential Tenancy Branch

