



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPR, MNR, MNSD

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 47;

The Landlord applied on for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to retain the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing the Landlord stated that the application was amended prior to the hearing to add a claim for an order of possession pursuant to the one month notice to end tenancy for cause that the Tenant is disputing. Although this amendment was not indicated in the materials provided for the hearing, I accept the Landlord’s oral request for an order of possession.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on November 1, 2013. Rent of \$1,000.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. On June 2, 2014 the Tenant was given a one month notice to end tenancy for cause with the stated reason of repeated late payment of rent (the "Notice"). On July 2, 2014 the Tenant was given a 10 day notice for unpaid rent.

The Tenant states that the rent was paid on July 14, 2014 with a shortfall of \$40.00 to cover the cost of a water filter that the Landlord required the Tenant to pay for. The Tenant states that this amount was deducted from the rent since January 2014. The Tenant described the store this was purchased at and states that she has a receipt somewhere indicating the cost of \$39.99 plus tax. The Landlord states that the Tenants were told that the water filter required replacement each month and that there was an oral agreement that the Tenant pay for this amount. It is noted that the tenancy agreement provides that water is included with the rent.

The Parties do not dispute that the Tenant was late paying rent for December 2013, January and February 2014 and May and June 2014.

### Analysis

An oral agreement cannot alter a written agreement. As there is no amendment to the tenancy agreement that includes the provision of water with the rent, considering that the Landlord is responsible for the service requirements for the provision of water, and given the credible evidence that the Tenant paid for the cost of the water filter for July 2014 and other months, I find that the rent was paid in full for July 2014 and that no other rents are owing. As such I dismiss the Landlord's application with leave to reapply for unpaid utilities should any utilities remain unpaid at the end of the tenancy.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Based on the undisputed evidence I find that the Landlord has substantiated that the rent had been repeatedly paid late. I find therefore that the Notice is valid and I dismiss the Tenant's application.

Section 55 of the Act provides that where a tenant's application to dispute a notice to end tenancy has been dismissed at the time of the hearing and the landlord makes a request for an Order of Possession such an Order must be granted. Given the dismissal of the Tenant's application and considering the oral request for an order of possession, I find that the Landlord is entitled to an Order of Possession effective 1:00 p.m. on July 31, 2014.

#### Conclusion

**I Grant** the Landlord an order of possession effective 1:00 p.m. on July 31, 2014.

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: July 24, 2014

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Residential Tenancy Branch

