



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, CNC, FF

### Introduction

This hearing dealt with cross applications. In the Tenants' Application for Dispute Resolution, the Tenant sought an Order cancelling a 1 Month Notice to End Tenancy for Cause as well as recovery of the filing fee. In the Landlord's Application for Dispute Resolution the Landlord sought an Order for Possession, as well as Monetary Orders for money owed or compensation for damage of loss under the Act, regulation or tenancy agreement, to retain the security deposit and recover the filing fee.

The Applicant Tenant did not appear at the hearing. Conversely, the Landlord appeared at the hearing.

The hearing was by telephone conference call and was to begin at 9:00 a.m. on October 14, 2014. 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.

As the Applicant Tenant did not attend the hearing by 9:10 a.m., I dismiss her claim without leave to reapply.

The Landlord gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

The Landlord testified that the tenancy began June 2013. The monthly rent was originally \$975.00 and rose to \$995.00 September 1, 2014 pursuant to a notice of rental increase served May 2014. The Tenant paid a security deposit in the amount of \$487.50.

The Landlord provided an extensive statement dated, August 29, 2014, detailing her interactions with the Tenant and in particular an incident on July 20, 2014 (the "July 20, 2014 Incident"); I find it unnecessary to reproduce the contents of that statement. In any case, I find the Landlord's written statement and undisputed testimony sufficient to establish cause to end the tenancy.

I accept the Landlord's undisputed testimony that during part of the tenancy, the Tenant had use of the Landlord's freezer. During the July 20, 2014 Incident the Landlord attempted to retrieve the freezer after giving the Tenant appropriate notice. When the Landlord and her daughter arrived at the rental unit, the freezer was not at the rental unit. The Landlord testified that the replacement cost of the freezer is \$500.00. On the Landlord's Application for Dispute Resolution, the Landlord sought \$487.50 as compensation for loss of the freezer.

The Landlord also sought recovery of \$500.00 in lawyer's fees she incurred as a consequence of the July 20, 2014 Incident.

The 1 Month Notice to end Tenancy for Cause was served on the Tenant by attaching to the Rental Unit door on August 2, 2014 (the "Notice"). Pursuant to section 90, documents served in this manner are deemed served three days later; namely August 5, 2014.

The Tenant made her Application on August 22, 2014. Pursuant to section 47(4) of the Act, a Tenant, when served with a 1 Month Notice to end Tenancy for Cause, has 10 days after receiving the Notice to make an application for dispute resolution. In this case, the Tenant did so 17 days after receiving the Notice. In her material filed in support of her application, she writes that she was away from July 30<sup>th</sup> to August 6<sup>th</sup>; presumably she provides this information in an attempt to explain why she did not make an application within the required timeline. In any case, she did not make an application

for more time to make an application to cancel the Notice pursuant to section 66 of the Act.

The Landlord testified that the Tenant moved from the rental unit on October 12, 2014 and, with the assistance of a large moving van, removed all of her personal possessions.

At the time of the hearing, the Tenant owed rent for September 2014 in the amount of \$995.00 and October 2014 also in the amount of \$995.00. In total the Tenant owes \$1,990.00 in outstanding rent.

### Analysis

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

The Tenant did not apply to dispute the Notice within 10 days of receiving the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$2,527.50 comprised of the following:

- September 2014 rent                      \$995.00
- October 2014 rent                        \$995.00
- Compensation for freezer                \$487.50

and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$487.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$2,040.00.

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

Conclusion

The Tenant failed to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 17, 2014

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Residential Tenancy Branch

