



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF, CNC, CNR, ERP, FF, LRE, MNDC

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenant has put on his application. For claims to be combined on an application they must related.

Not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy, and I dismiss the monetary claim with liberty to re-apply.

I will also deal with the landlord's request for an Order of Possession and a monetary order for outstanding rent.

### Background and Evidence

Landlord testified that:

- This tenancy began on January 1, 2009 with the monthly rent of \$970.00.
- The tenant paid a security deposit of \$475.00 on December 5, 2008.
- The tenant failed to pay the October 2014 rent and therefore on October 2, 2014 the tenant was personally served with a 10 day Notice to End Tenancy.
- To date the tenant has failed to comply with that notice, and has failed to pay any further rent.
- He is therefore requesting an Order of Possession for as soon as possible and the monetary order as follows:

October 2014 rent outstanding	\$970.00
November 2014 rent outstanding	\$970.00
Filing fee	\$50.00
Total	\$1990.00

The tenant testified that:

- He has not paid the October 2014, or November 2014 rent as he decided to withhold the rent due to the fact that the landlord has failed to provide proper heat.
- He has therefore had to pay for a furnace repair, however he has never billed the landlord for that repair or given the landlord a copy of any receipt.
- He is therefore asking the Notice to End Tenancy cancelled.

### Analysis

It is my finding that the tenant did not have the right to withhold the rent, and therefore the landlord does have the right to end this tenancy for outstanding rent.

The tenant cannot withhold rent without first getting an order from an arbitrator allowing him to do so, or in very limited circumstances, if the tenant has paid for emergency repairs, has billed the landlord for those repairs, and the landlord has failed to pay the bill.

In this case as stated by the tenant, he has never billed the landlord or any emergency repairs.

I therefore deny the tenant's request to cancel the Notice to End Tenancy.

It is my finding therefore that at this time there is a total of \$1940.00 in rent outstanding, and I therefore allow the landlord's request for a monetary order for that outstanding rent.

It is also my finding that the tenant has been served with a valid 10 day Notice to End Tenancy and has failed to comply with that notice, and I therefore also allow the landlord's request for an Order of Possession.

I further allow recovery of the landlord's filing fee.

### Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed and as stated above the tenants monetary claim is dismissed with leave to reapply. Since this tenancy is ending there is no need for me to deal with the tenants requests for repairs or services.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have allow the landlord's full monetary claim of \$1990.00 and I therefore order that the landlord may retain the full security deposit of \$475.00, and I have issued a monetary order in the amount of \$1515.00

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: November 24, 2014

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Residential Tenancy Branch

