



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, FF

For the landlord OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants provided evidence to the Residential Tenancy Office and the landlord; however this evidence did not meet the rules of Procedure and was provided late. S. 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. As the tenant provided no documentary evidence as to the reason why the evidence was served to the other party and sent to the Residential Tenancy Branch late I am not prepared to consider the tenant's documentary evidence pursuant to s. 3.17 of the Rules of Procedure as in accepting this evidence I find it may

prejudice the other party who did not have sufficient time to respond to this evidence prior to the hearing.

### Preliminary Issues

The landlord testified that the tenant was served the hearing documents by posting them to the tenant's door on October 16, 2014. S. 89(1) of the *Act* refers to ways upon which the landlord may serve hearing documents to a tenant when applying for a Monetary Order. This service must be done either by leaving a copy with the person; by sending a copy by registered mail to the address at which the person resides or, if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant. As the landlord did not serve the tenant in one of these ways I am unable to deal with the landlord's monetary claim at this hearing. The landlord's claim for unpaid rent or utilities, to keep the security deposit and for money owed or compensation for damage or loss is dismissed with leave to reapply.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

### Background and Evidence

The parties agreed that this tenancy started on January 07, 2011 for a fixed term which is due to end on April 30, 2015. Rent for this unit is \$2,950.00 per month due on the 1<sup>st</sup> of each month. The parties agreed that the rent was reduced to \$1,475.00 per month until renovations were completed in part of the unit.

The landlord testified that a previous hearing took place in September, 2014 in which that Arbitrator found that the tenant was entitled to the rent reduction until such a time as the landlord informs the tenant in writing that the landlord deems the restoration to be

complete and that full rent is due on the first day of the upcoming month. Upon receiving this written notice the tenant becomes obligated to pay the full rent by the next time rent is due. If upon receiving notice that the restoration is complete, the tenant feels the restoration/repairs are inadequate; the tenant retains the right to file an application for Dispute Resolution in which the tenant seeks a rent reduction and/or an order requiring the landlord to make repairs.

The landlord testified that the tenant was notified in writing in September, 2014 that the landlord deems the renovations to be complete and that the tenant must start paying the full amount of rent of \$2,950.00 from October 01, 2014. The landlord testified that the tenant failed to do so and the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent; however, the landlord has not provided a copy of this 10 Day Notice in documentary evidence. The landlord seeks an Order of Possession for unpaid rent.

The tenant testified that the unit was not in the same condition as it was before the restoration work started and is in an inferior condition. The tenant testified that after the landlord said the renovation work was completed they walked around the unit and the landlord was shocked about the deficiencies in the unit and made a list of them. The tenant agreed that she did not start paying the full amount of rent on October 01, 2014 because of the repairs still required in the unit. The tenant seeks to cancel the 10 Day Notice to End Tenancy for unpaid rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a landlord applies for an Order of Possession of a rental unit the landlord is required to provide a copy of the complete 10 Day Notice to End Tenancy so the Arbitrator can determine that a legal and valid notice has been served upon the tenant. In the absence of a copy of this 10 Day Notice I am not able to uphold the landlord's claim for an Order of Possession.

With regard to the tenant's application to cancel the 10 Day Notice to End Tenancy, as the tenant agreed that she did not comply with the direction made at the previous hearing to pay the full amount of rent once the tenant received written notice from the landlord that renovations were completed. I find in accordance with the previous decision that the tenant should have started to pay the full rent of \$2,950.00 from October 01, 2014 and then if the tenant was not satisfied that the renovations were completed the tenant had the option of filing an application for Dispute Resolution. As there remains outstanding rent for October, 2013 I am not prepared to cancel the 10 Day Notice to End Tenancy which the parties agreed was served on October 03, 2014.

Both parties must bear the cost of filing their own applications.

#### Conclusion

The landlord's application is dismissed in its entirety with leave to reapply.

The tenant's application to cancel the Notice is dismissed without leave to reapply.

The landlord is at liberty to file a new application for Dispute Resolution under the same 10 Day Notice served on October 03, 2014 or issue the tenant with a new 10 Day Notice for unpaid rent.

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 26, 2014

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Residential Tenancy Branch

