



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR RP ERP RR PSF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated October 20, 2014 to be effective October 30, 2014 and the tenant confirmed it was served by posting on her door. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy? Or is the tenant entitled to any relief?

Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord through act or neglect is not maintaining the property and has interfered significantly with her peaceful enjoyment contrary to section 28 of the Act? Has she proved she is entitled to compensation pursuant to section 27 of the Act for a facility withdrawn?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy

commenced in May 2013, rent is \$525 a month and a security deposit of \$262.50 was paid in May 2013. The landlord served a Notice to End Tenancy stating the tenant owed \$2100 in rent as of October 20, 2013 when the Notice was issued. The landlord said the tenant has paid no rent since July 2014. The landlord requested an Order of Possession if the tenant is unsuccessful.

The tenant maintained she had paid the \$2100 in cash but been given no receipts. She claimed she had witnesses. When it was pointed out to her that the landlord had submitted receipts for the past year as evidence to show she did issue receipts, she denied she had received receipts. When she was asked where she got the \$2100 as she is on assistance, she said she got it from the bank but was too busy to submit any bank statement to show the withdrawal for the payment. The landlord said she was desperate and had called Social Assistance about rent payments but they told her that the tenant had to give permission for her to be paid her rent directly and advised her to go to the Residential Tenancy Branch.

The tenant had some issues with the landlord and the conference had to be muted at one point because of the interruptions and arguments between the parties. The tenant complained of a flood last year but the landlord provided evidence that the tenant had received three months free rent as compensation. The tenant said she lost her cable in 2013 although it was in the lease. The landlord agreed it was in the lease but she said that the agreement was that the tenant could use the cable from upstairs and it has never been cut off. The tenant provided no objective evidence such as a letter from a cable company to show it had been cut off. The landlord said she has never been given anything in writing concerning the complaints of the tenant in her application. No evidence of written complaints was submitted by the tenant.

The landlord said she would open the garage at 11 a.m. today so the tenant could retrieve her goods as she said she was moving today. The tenant wanted to argue about some items she claimed were missing but the landlord said all her stored items were in the garage so I declined to hear this. I pointed out to the tenant that she could make application at a future time when she could determine if anything was indeed missing and the landlord would have an opportunity then to refute her claim.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Section 26 of the Act provides that a tenant must pay rent when due whether or not the landlord fulfills their obligations under the Act. Although the tenant maintains she paid

the \$2,100 rent owed in cash but got no receipts, I find the evidence of the landlord more credible and prefer it to the tenant's evidence. I find the landlord's evidence credible because she submitted receipts she had given to the tenant in the past; I find these receipts most likely were made at the time of rent payment for they are for partial payments at various dates and the tenant's name is sometimes written in long form and sometimes short form. Furthermore, I find it unlikely that a person on assistance would have \$2100 available in their bank account after not being able to pay their rent of \$525 for several months. Again when I told the tenant that she was unsuccessful in the hearing, she said she was moving today anyway, which again is unlikely if she paid all rent owing. I dismiss the application of the tenant to set aside the Notice to End Tenancy.

I dismiss the claim of the tenant for damages. I find she was compensated for the flood at the time by having three free months' rent. I find insufficient evidence that her cable was cut off by the landlord and insufficient evidence that she ever provided written complaints regarding maintenance before she brought this application. As the tenant is leaving today, I find it is moot to consider an order for repairs now. I dismiss this portion of her claim.

**Conclusion:**

The application of the tenant is dismissed in its entirety. Pursuant to section 55 of the Act and the landlord's request in the hearing, I find the landlord entitled to an Order of Possession effective two days from service. No filing fee was involved.

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: December 11, 2014

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Residential Tenancy Branch

