



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SMSG MOUNTAIN VIEW DEVELOPMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

<u>Dispute Codes</u>	OPR, MNR (Landlord's Application)
	CNC, OLC (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant and the Landlord.

The Tenant applied to cancel a notice to end tenancy for unpaid rent and for the Landlord to comply with the *Residential Tenancy Act* (the "Act").

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and no issues were raised with regards to the service of the parties' Applications and the Notice of Hearing documents.

The hearing process was explained and both parties provided affirmed testimony and were given the opportunity to present evidence and cross examine each other on the evidence provided.

### Preliminary Issues

At the start of the hearing, the Landlord requested that he be allowed to increase his monetary claim to include unpaid rent for January, 2015.

The Landlord also requested to keep the Tenant's security deposit in lieu of unpaid rent.

The Tenant acknowledged that January 2015 rent had not been received by the Landlord. As a result, I amended the Landlord's Application to increase the monetary claim for unpaid rent to \$1,380.00 and a request to keep the Tenant's security deposit. This was done under the authority afforded to me by Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep all of the Tenant's security deposit in partial satisfaction of outstanding rent?

Background and Evidence

Both parties agreed that this month to month tenancy began on October 1, 2010. A written tenancy agreement was completed and rent was established at the start of the tenancy in the amount of \$675.00. The parties agreed that the current rent amount payable under the agreement is now \$690.00 and that this is due on the first day of each month.

The parties confirmed that the Landlord was provided with a security deposit in the amount of \$337.50 at the start of the tenancy which the Landlord still retains.

The Landlord explained that the parties appeared for a previous hearing where the Landlord had been awarded a Monetary Order for unpaid rent for the months of September, October and November 2014.

However, the Tenant has now also failed to pay rent for December 2014. As a result, the Landlord served the Tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on December 4, 2014.

The Notice was provided as evidence and shows an effective date of vacancy of December 14, 2014 due to unpaid rent in the amount of \$690.00 due on December 1, 2014.

The Landlord further testified that the Tenant has also failed to pay rent for January, 2015 and the total amount of rent arrears is now \$1,380.00.

The Tenant acknowledged receipt of the Notice on December 4, 2014.

The Tenant explained that his rent is paid by a government ministry to the Landlord and he has been trying to get them to make the rent payments to the Landlord. The Tenant testified that he has been in constant communication with the ministry and they are in the process of making arrangements for the Landlord to be paid rent. The Tenant

explained that this process takes time and he has been assured by the ministry that they have contacted the Landlord to confirm that the rent cheques for both months will be provided.

The Landlord testified that he has had no communication from the ministry either in writing, by phone, fax or letter. The Landlord explained that if he received some contact from the ministry he would have been satisfied that the matter was being looked into and that this would have given him confidence that he would be receiving rent. As a result, the Landlord now seeks to end the tenancy.

### Analysis

Having examined the Notice, I find that the contents and approved form complied with the requirements of the Act and that the Tenant was personally served with the Notice on December 4, 2014. I also find that the Tenant applied to dispute the Notice within the five day time limit imposed by Section 46(4) of the Act.

Section 26(1) of the Act requires a Tenant to pay rent under a tenancy agreement whether or not the Landlord complies with the Act.

The Tenant acknowledged that rent had not been received by the Landlord for the months of December 2014 and January 2015.

The Tenant explained that his rent cheques to the Landlord had not been paid by the ministry due to a lengthy and bureaucratic process they have. However, I find that the Landlord should not have to be without rent due to an issue or problem that a Tenant is facing with a third party regarding rent due to the Landlord. Furthermore, the Tenant provided no corroborative evidence to support this testimony.

The Act states that rent is payable to a Landlord under a tenancy agreement. If the Tenant is unable to resolve an issue with a third party with whom they have an agreement or arrangement with to pay rent, then it is still the Tenant's responsibility to ensure that the Landlord receives rent in accordance with the agreement by other means.

There is no authority for me under the Act to cancel a notice due to a problem or issues a Tenant has with a third party to pay rent. Therefore, I cannot cancel the Notice which is hereby upheld.

Accordingly, I grant the Landlord an Order of Possession. As the date of vacancy of the Notice has now passed, the Landlord is issued with an Order of Possession that is effective two days after service on the Tenant.

I also grant the Landlord a Monetary Order for unpaid rent for the months of December 2014 and January 2015 in the amount of **\$1,380.00**.

As the Landlord has been successful in his Application, I also award the Landlord the **\$50.00** filing fee for the cost of having to make the Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$1,430.00**.

As the Landlord already holds **\$337.50** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the outstanding rent owed pursuant to Section 38(4) (b) of the Act. Therefore the outstanding balance owed to the Landlord by the Tenant is **\$1,092.50**.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,092.50**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Tenant's Application is dismissed **without** leave to re-apply.

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: January 08, 2015

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Residential Tenancy Branch

