



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing the Landlord stated that he received the Tenant’s application for dispute resolution taped to his door on February 16, 2015 and that he served his evidence package on February 19, 2015 to both the Tenant and the RTB. The Tenant confirmed that the application for dispute resolution was not picked up from the RTB until February 10, 2015. Although the Landlord’s evidence was received late, considering the Tenant’s late service of the application to the Landlord I find that it would be reasonable in the circumstances to consider the Landlord’s evidence package.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed evidence: The tenancy started on June 1, 2012. Rent of \$750.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit. On February 2, 2015 the Tenant received a 10 day notice for unpaid rent (the "Notice") of \$1,525.00 comprised of \$400.00 in rental arrears from January 2014, \$375.00 in rental arrears for January 2015 and \$750.00 for unpaid February 2015 rent.

The Tenant states that she did not pay these rents because the Landlord failed to provide the Tenant with accommodation after a fire occurred in the Tenant's unit on November 7, 2014.

The Tenant states that the fire was accidentally caused by the Tenant and that the Tenant has no renters insurance. The Tenant states that although her belongings were moved out of the unit following the fire the Tenant wanted to retain the unit and so paid the rent while it was being repaired. The Tenant states that expenses were incurred by the Tenant as a result of the fire and that the Landlord was obliged to provide her with alternate accommodation since she paid the rent for the unit. The Tenant states that she moved back into the unit for the last week in December 2014. The Tenant states that the Landlord did pay for one month of her car insurance cost and hotel stay of a few days. The Tenant claims reimbursement of the December 2014 rent paid less the car insurance and hotel stay. The Tenant also claims \$510.00 for the costs of alternate accommodation. The Tenant states that the shed on the property was used to store her belongings and that as the roof leaked her belongings were destroyed by mold. The Tenant claims \$168.83 as the costs to repair the shed. It is noted that no particulars on this claim are set out in the application.

The Landlord states that the Tenant caused the fire by leaving a toaster on a live stove element. The Landlord states that his insurance was contacted and a restoration company started work on the unit two days after the fire. The Landlord states that the unit was completely restored on December 22, 2014. The Landlord states that the

Tenant was offered a month stay at a hotel and refused but did accept a 4 day stay at a hotel during November 2014. The Landlord states that he made this offer to help the Tenant out. The Landlord states that the Tenant was at the unit every day during the renovations. The Landlord requests an order of possession if the Notice is found valid.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that the Tenant did not pay the rent as set out in the Notice and as the Tenant does not have a valid reason for not paying the rent, I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. I therefore dismiss this claim.

Section 55 of the Act provides that where a tenant disputes a notice to end a tenancy and at the hearing the notice is upheld and the landlord makes an oral request for an order of possession, such an order must be granted. As the Landlord requested possession of the unit and as the Notice has been found valid, I find that the Landlord is entitled to an order of possession effective 1:00 p.m. on February 28, 2015. I note that this order was verbally provided at the hearing.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the fire was caused by the Tenant and that the Landlord quickly responded to restore the unit, I find that the Tenant has not provided

sufficient evidence to substantiate that the Landlord acted negligently in relation to restoring the unit or in having caused the fire leading to the losses claimed. Further, accepting that the Tenant did not accept the offer of a hotel for a month while the repairs were being made I find that the Tenant failed to take reasonable measure to mitigate the food and housing losses claimed and I dismiss these claims. Given the lack of particulars on the claims for the repair of the shed, I dismiss this claim. The Tenant's application is essentially dismissed in its entirety.

### Conclusion

The Tenant's application is dismissed.

**I grant** an Order of Possession to the Landlord effective 1:00 pm on February 28, 2015.

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: March 6, 2015

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Residential Tenancy Branch

