



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNR, DRI, LAT, LRE, MNDC, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with two related applications. One was the tenant's application for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; suspending or setting conditions on the landlord's right of entry; authorizing the tenant to change the locks on the rental unit; setting aside a rent increase; and granting her financial compensation. The other was the landlord's application for an order of possession, a monetary order, and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing I exercised my discretion and authority pursuant to Rule 2.3 of the Rules of Procedure and severed the tenant's claim for a monetary order from this application and dismissed it with leave to re-apply. The tenant's advocate explained this process to the tenant and reported that she understood the order.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Should an order be made limiting the landlord's right of entry and, if so, on what terms?
- Should an order be made permitting the tenant to change the locks on the rental unit?

### Background and Evidence

This tenancy commenced June 15, 2014 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. At the beginning of the tenancy the monthly rent, which is due on the first day of the month, was \$750.00 and included laundry facilities. The tenant paid a security deposit of \$375.00.

The tenant also testified that she paid a key deposit of \$500.00; a claim the landlord denied.

On June 30 the landlord's husband and three other men came to the rental unit and removed the laundry equipment. Although I did not hear much evidence on this issue it appears there was an argument.

The landlord testified that effective July 1, 2015, the rent was reduced to \$700.00 per month to reflect the fact that laundry facilities were no longer provided.

On July 21, 2015, the landlord issued and served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. It claimed arrears of rent as of June 1, 2015, in the amount of \$750.00. The tenant filed her application for dispute resolution on July 23, 2015.

The landlord hired an agent and on August 12, 2015 they issued and posted another 10 Day Notice to End Tenancy for Non-Payment of Rent, this time claiming arrears of rent as of August 1, 2014 in the amount of \$2250.00. The tenant testified that she found the notice crumpled on the ground near her door. She did not file an application disputing the notice.

Both parties agree that the tenant has always paid the rent in cash and the landlord has never given a receipt for cash payments.

The tenant testified that she has paid \$750.00 in cash every month up to and including the September rent. Her ex-husband and the landlord's husband come to the rental unit and her ex-husband pays the landlord's husband. Although they have asked for a receipt none has ever been provided.

The landlord testified that in the past she would make arrangements with the tenant to have the rent paid to her neighbour. She testified that her husband has never picked up the rent and, in particular, they have not received any rent for June, July, August or September.

The tenant testified that is only on a few occasions in the past that the rent was delivered to the neighbour.

The landlord's husband, who was present in the hearing, did not testify. Neither the neighbour nor the ex-husband were called as witnesses nor were any statements from them filed in evidence.

### Analysis

On applications for an order of possession or an order setting aside a notice to end tenancy the burden of proof is on the landlord and the standard of proof is on a balance of probabilities. What that means in practical terms on this application is that it is the landlord who must prove that the tenant did not pay the rent, not the tenant who must prove that she did pay the rent.

Section 26(2) of the *Residential Tenancy Act* states that a landlord must provide a tenant with a receipt for rent paid in cash. The advantage of giving receipts when cash payments are made is that when cash payments are not made the lack of a receipt can be proof of non-payment.

In this case the only evidence as to whether the rent has been paid is the contradictory oral testimony of the parties. There is no oral evidence from anyone else about payment or non-

payment of the rent and no documentary evidence such as bank statements or deposit slips to tip the balance of probabilities in the landlord's favour.

Further the landlord's credibility is diminished by two factors:

- Her husband, who could have testified in response to the tenant's allegation that rent was paid to him, did not testify although he was present in the hearing.
- The landlord's claim for rent was not consistent. On the Application for Dispute Resolution and in her instructions to her agent the landlord said the rent was \$750.00 per month but in the hearing she testified that the rent had been reduced to \$700.00 per month.

Based on the above considerations I find that the landlord has not proven, on a balance of probabilities, that there were arrears of rent owed on July 21, 2015. Accordingly, the 10 Day Notice to End Tenancy dated July 21, 2015, is set aside and is of no force or effect.

For the same reason, I find that the landlord has not proven, on a balance of probabilities, that the June, July, August and September rents were not paid. The landlord's claim for a monetary order is dismissed.

The second 10 Day Notice to End Tenancy was dated August 12, 2015 and refers to arrears of rent that were due on August 1, 2014.

Section 68 allows an arbitrator to amend a Notice to End Tenancy that does not contain any of the information required by section 52 if satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice; and,
- in the circumstances, it is reasonable to amend the notice.

This Notice to End Tenancy did contain all of the information required by section 52 and that information was accurate. The section does not allow me to amend other parts of the notice to end tenancy that were included but were wrong.

The landlord's evidence is that there were no arrears of rent owed on August 1, 2014 and, as ruled previously, her evidence failed to establish that there were arrears of rent owed on August 1, 2015. Either way, I am not prepared to grant an order of possession based upon the August notice. The landlord's application for an order of possession is dismissed.

The only evidence regarding improper entry by the landlord is the occasion when the laundry equipment was removed and a reference to a second argument about a week later. The evidence did not establish a pattern of repeated illegal entry. However, the landlord is reminded that the *Residential Tenancy Act* sets out rules for a landlord's entry of a rental unit and she and her husband are urged to educate themselves on those rules. If there are any further violations

by the landlord or her agents the tenant may again apply for orders limiting the landlord's right of entry and allowing her to change the locks.

There was contradictory evidence about whether the tenant paid a "key deposit" or not. A decision on this issue is not required for this application. It may be an issue in future dispute resolution proceedings between the parties and I wish to make it very clear that I have not made any finding on the issue.

The landlord was unsuccessful on her application so no order will be made regarding the fee she paid to file it. The tenant did not pay a fee to file her application so no order is necessary.

#### Conclusion

- a. The tenant's application for a monetary order is dismissed with leave to re-apply.
- b. The 10 Day Notice to End Tenancy dated July 21, 2015, is set aside and is of no force or effect.
- c. An order of possession based upon the August 12, 2015 10 Day Notice to End Tenancy is refused.
- d. All other applications by both parties are dismissed.

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: October 01, 2015

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Residential Tenancy Branch

