



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to hear cross applications. The tenant filed to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and authorization to reduce rent for repairs, services or facilities not provided. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Although the tenant indicated he was seeking authorization to reduce rent for repairs or services or facilities not provided, the tenant did not provide any details as to the repairs, or services or facilities that had not been provided by the landlord with his Application for Dispute Resolution or any other submissions. Accordingly, I did not further consider his request for authorization to reduce rent.

During the hearing, the landlord requested authorization the rent owed by the tenant from the security deposit. I found this request to be non-prejudicial to the tenant as it would reduce or eliminate any Monetary Order I would provide to the landlord and I amended the landlord's application accordingly.

### Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy issued on September 8, 2015 be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to recover unpaid rent from the tenant?
4. Is the landlord authorized to retain any or all of the security deposit?

### Background and Evidence

The tenant submitted that his tenancy commenced approximately two years ago and that he had been sharing the rental unit with his father for the monthly rent of \$750.00. Both parties provided consistent testimony that after the tenant's father passed away the landlord reduced the monthly rent to \$575.00. Rent is paid to the landlord directly from Income Assistance.

At the end of February 2015 the building manager appearing before me took over from the previous managers. She submitted that record keeping by the previous managers was poor and she was tasked with cleaning up the records, which included getting the tenancy agreements in writing. On March 4, 2015 the tenant and the manager signed a tenancy agreement to reflect that the monthly rent of \$575.00 was due on the 1<sup>st</sup> day of every month for the subject rental unit.

The manager submitted cheque stubs that were attached to the rent cheques received from Income Assistance on behalf of the tenant. The cheque stubs show that \$375.00 (or half of \$750.00) was received on behalf of the tenant in January 2014 through August 2014 and then \$575.00 was received starting September 2014 through to July 2015. Then for the month of August 2015 the landlord received only \$535.00 from Income Assistance. The manager brought the issue to the tenant's attention and requested that he rectify the matter. For the month of September 2015 only \$535.00 was received again. On September 8, 2015 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$80.00 was outstanding for August and September 2015 and an effective vacancy date of September 18, 2015.

It was also undisputed that after receiving the 10 Day Notice the tenant did not pay the outstanding rent. I also heard that Income Assistance also sent the landlord another \$535.00 for the month of October 2015. In recognition of this, the landlord was agreeable to permitting the tenant use and occupancy until the end of October 2015 and requested an Order of Possession effective October 31, 2015.

The tenant filed to dispute the 10 Day Notice on the basis that rent was supposed to be reduced to \$535.00 starting last year as a result of his father's passing. The tenant testified that his father died in June or July 2014 and the rent was initially reduced to \$575.00 shortly thereafter but that in the fall of 2014 he requested the landlord and the former manager reduce the rent further to \$535.00 as the tenant did not have enough money for food. The tenant claimed that the landlord and former manager had agreed to this request. The tenant claimed that Income Assistance had been paying the landlord \$575.00 every month in error and they failed to close a second file that had been opened for the tenant in a timely manner, despite his requests. The tenant

submitted that when Income Assistance finally closed the second file that rent payments reduced to \$535.00.

Documentary evidence provided for my review included a copy of the tenancy agreement signed on March 4, 2015; the 10 Day Notice dated September 8, 2015; and, cheque stubs from Income Assistance for rent payments made for the months of January 2014; August 2014; September 2014; January 2015; March 2015; April 2015; May 2015; July 2015; August 2015 and September 2015.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receipt of a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or five days to dispute the Notice.

The tenant received the 10 Day Notice on September 8, 2015 and did not pay the outstanding rent. He had until September 14, 2015 to file an Application for Dispute Resolution to dispute the Notice since the fifth day fell on a Sunday. The tenant dated his Application September 14, 2015; however, his fee waiver was accepted on September 15, 2015 and his Application was forwarded from the BC Service office on September 15, 2015. Although it would appear the tenant was late in filing, given there is some possibility the tenant attended the BC Service Office on September 14, 2015 to dispute the 10 Day Notice I gave the benefit of the doubt to the tenant and considered the 10 Day notice to be disputed.

Upon review of the duly executed written tenancy agreement dated March 4, 2015 I find that since March 2015 the monthly rent has been \$575.00 despite any prior agreement. The cheque stubs from Income Assistance for the months of August 2015 and September 2015 show that there was a rent shortfall of \$40.00 for the month of August 2015 and for the month of September 2015. Accordingly, I am satisfied that the landlord had a basis to issue the 10 Day Notice to the tenant for unpaid rent in the sum of \$80.00. Upon review of the 10 Day Notice I accept that the 10 Day Notice served upon the tenant is duly completed and in the approved form.

The tenant submits that rent was supposed to be \$535.00 since the fall of 2014 and if that were the case and the landlord continued to collect \$575.00 there is an argument to be made that the tenant overpaid rent from the fall of 2014 until March 2015 when the most recent tenancy agreement was executed. Where a tenant overpays rent, the Act

provides that a tenant may withhold rent until such time the overpayment is recovered. Therefore, I find that I must determine whether there had been an overpayment for the period between the fall of 2014 and March 2015.

Upon consideration of the submissions and evidence before me, I find the tenant's submission that the landlord had agreed to a monthly rent of \$535.00 to be unsupported and inconsistent with the evidence and actions of the parties. For instance:

1. If rent had been set at \$535.00 because the tenant did not have enough money for food why would the tenant agree to increase the rent to \$575.00 and execute a tenancy agreement showing rent of \$575.00?
2. The tenant presented no evidence that he requested the landlord refund him the overpayment of \$40.00 every month if such an overpayment took place for several months.
3. If rent was reduced in the fall of 2014 and the Ministry continued to pay \$575.00 to the landlord this would reduce the net benefits available to the tenant and I find it likely there would be some correspondence or record with the Ministry to document the tenant's request to reduce rent payments to \$535.00 yet the tenant did not present any such documentation.

Therefore, I find the tenant did not establish a reasonable likelihood that rent was overpaid in previous months and I find there are insufficient grounds to conclude the tenant had a legal right to withhold \$40.00 that was otherwise due to the landlord for the months of August 2015 and September 2015.

In light of the above, I uphold the 10 Day Notice issued on September 8, 2015 and I find the tenancy has ended for unpaid rent. Accordingly, the tenant's application to cancel the 10 Day Notice is dismissed and the landlord's request for an Order of Possession is granted. In recognition of the landlord's request, I provide the landlord with an Order of Possession effective October 31, 2015.

I further find the landlord entitled to recover the unpaid rent of \$80.00 for the months of August and September 2015. In addition, the tenant has continued to occupy the rental unit and received only \$535.00 for the month of October 2015 causing the landlord to suffer a further loss of \$40.00. Therefore, I award the landlord loss of rent of \$40.00 for the month of October 2015.

As the landlord was successful in this dispute, the landlord is awarded recovery of the \$50.00 filing fee paid by the landlord.

The landlord has been awarded a total of \$170.00 by way of this decision. The landlord is authorized to deduct \$170.00 from the tenant's security deposit as requested. The remainder of the security deposit remains in trust to be administered in accordance with the Act.

### Conclusion

The tenant's application has been dismissed.

The landlord has been provided an Order of Possession for unpaid rent effective October 31, 2015. The landlord has been awarded \$170.00 and has been authorized to deduct this amount from the tenant's security deposit in satisfaction of this award.

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 13, 2015

---

Residential Tenancy Branch

