



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VILLA VENEZIA C/O GATEWAY PROPERTY MANAGEMENT CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. An order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking an order as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent, issued on October 2, 2015 (the "Notice").

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The landlord's agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on October 2, 2015, by posting to the door. The agent

indicated that the tenant was in rent arrears of \$1,200.00, although they accidentally typed \$1,150.00 on the Notice.

The landlord's agent stated that the tenant did not pay the outstanding rent and has not paid any rent for November 2015. The landlord seeks to recover unpaid rent in the amount of \$2,050.00. The landlord seeks an order of possession.

The tenant acknowledged that they received the Notice and have not paid any rent to the landlord since the Notice was issued.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

*26 (1) 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

#### **Landlord's notice: non-payment of rent**

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect,  
or*

*(b) dispute the notice by making an application for dispute  
resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice and did not have the right under the Act to withhold rent. Therefore, I dismiss the tenant's application without leave to reapply.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$2,100.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$425.00** and pet damage deposit of **\$425.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,250.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession and a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

#### Conclusion

The tenant's' application is dismissed. The landlord(s) are is granted an order of possession.

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: November 16, 2015

