



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RPP, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a Notice to End Tenancy for unpaid Rent or Utilities issued on November 13, 2015 (the "Notice") and Order compelling the Landlord to return the Tenant's personal property and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the tenant be entitled to an order that the Landlord return her personal property?
3. Is the Tenant entitled to recover her filing fee?

### Background and Evidence

The Landlord testified as to the terms of the tenancy. She stated that the tenancy began June 26, 2015 and was to be for two months. Monthly rent was payable in the amount of \$500.00 (which was to include heat and lights) and A.W., an agency on behalf of the Tenant, paid a security deposit of \$200.00 which the Landlord continues to hold.

On November 13, 2015 the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities indicating that \$1,800.00 was owed as of November 1, 2015 (the "Notice"). The Landlord testified that she put the Notice in the Tenant's mailbox on November 13, 2015.

The Landlord further testified that the \$1,800.00 noted on the Notice included outstanding rent for the following months:

- August 2015                 \$300.00
- September 2015            \$500.00
- October 2015               \$500.00; and
- November 2015            \$500.00.

The Landlord stated that on November 14, 2015 the Tenant provided the Landlord with the following cheques:

- A cheque for September in the amount of \$500.00;
- A cheque for October in the amount of \$500.00; and
- A cheque for November in the amount of \$500.00.

The Landlord stated that the Tenant failed to pay the August rent such that \$300.00 remains outstanding as of the date of the hearing.

The Landlord further testified that personal property to which the Tenant refers is a ring which the Landlord is holding as collateral for a \$300.00 personal loan she provided to the Tenant in relation to storage of the Tenant's furniture. She confirmed this amount had been repaid by the Tenant and that she has attempted on two separate occasions to return the ring.

I informed the parties that the \$300.00 personal loan, and collateral, is outside the scope of the *Residential Tenancy Act*, and therefore I lack jurisdiction to make any

orders in this regard. In any case, the parties agreed that they would meet at a jewelry store, D.J., at 4:00 p.m. on January 13, 2016 for the return of the ring.

The Landlord testified that the Tenant's rent payment for January 2016 was not honoured as the Tenant issued a stop payment on the cheque on January 5, 2016. She confirmed that she issued another 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "January Notice").

The Tenant disagreed that \$300.00 was outstanding for August 2015. She stated that A.W. issued a cheque for \$200.00 to the Landlord for the August rent, and she claimed that she provided the Landlord \$100.00 in cash. The Tenant further stated that she and the Landlord agreed that the balance of the August rent would be paid by the Tenant's security deposit of \$200.00.

The Tenant did not provide any proof of the cash payment she stated she made to the Landlord in August of 2015. The Tenant also failed to provide any evidence to support her claim that the Landlord agreed to apply the security deposit towards the outstanding August rent.

The Landlord disputed that any such agreement existed with respect to the security deposit and the August 2015 rent. She further testified that the Tenant did not provide her with \$100.00 cash as claimed.

The Tenant further testified that she wrote the Landlord a cheque, dated September 1, 2015 in the amount of \$250.00 to replenish the security deposit. The Tenant stated that the Landlord failed to cash the cheque.

The Landlord confirmed that she had not cashed the \$250.00 cheque as the Tenant wrote on the cheque that the funds were for a "security deposit" and the Landlord had already accepted a \$200.00 security deposit.

The Tenant confirmed that she issued a stop payment on the January 2016 rent cheque. She further confirmed that she received the 10 Day Notice for Unpaid Rent on January 7, 2016. She further confirmed that she did not apply to dispute the January Notice as she believed it would be addressed during the within hearing.

### Analysis

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

I accept the evidence of the Landlord that the Tenant failed to pay the outstanding rent for August 2015. The Tenant alleged that the Landlord agreed to apply the security deposit towards this outstanding amount. The Landlord denied that such an agreement existed.

The Tenant further alleged she made a cash payment to the Landlord. She failed to provide any evidence to support his claim. The Landlord denied receiving any cash from the Tenant.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, I find that the Tenant failed to prove the Landlord agreed to accept her security deposit as payment of her outstanding rent. I further find that the Tenant failed to prove she paid cash to the Landlord.

Accordingly, I find that the Tenant has not paid the outstanding rent.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

Section 55 of the *Act* provides as follows:

#### **Order of possession for the landlord**

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice

As I have dismissed the Tenant's Application to dispute the Notice, and I have found that the Notice is valid, I must grant the Landlord an Order of Possession. The Order of Possession must be served on the Tenant by the Landlord and will be effective **two days** after service on the Tenant. This Order may also be filed in the Supreme Court and enforced as an Order of that Court.

The Tenant's claim for recovery of the filing fee is dismissed.

#### Conclusion

The Tenant failed to pay the outstanding rent and her Application to dismiss the Notice is dismissed. The Landlord is entitled to 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: January 20, 2016

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Residential Tenancy Branch

