



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, CNR, MNR, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

On January 15, 2016 (11 days prior to the hearing), the tenant amended his application to include a monetary order for compensation. RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant amended his application to include an order for the landlord to make repairs, reduce rent and pay compensation. As these sections of the tenant's application are unrelated to the main section which is to cancel the ten day notice to end tenancy, I dismiss these sections of the tenants claim with leave to reapply.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to an order of possession and a monetary order for unpaid rent or should the notice be set aside?

### **Background and Evidence**

The tenancy started on August 26, 2012. The monthly rent is \$1,400.00 per month and due on the first of each month. The landlord testified that the tenant paid partial rent for October 2015 and owed \$500.00. The landlord also stated that since then the tenant has not paid rent. The tenant agreed that as of the date of the hearing he owed the landlord \$5,100.00 in unpaid rent.

On November 27, 2015, the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant disputed the notice but did not pay rent and continues to occupy the rental unit. During the hearing the tenant agreed to move out and requested additional time. The parties discussed dates and agreed to February 05, 2016 as the last day of tenancy.

### **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on November 27, 2015 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective on February 05, 2016. The order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$5,100.00 for unpaid rent and \$100.00 for the filing fee for a total of \$5,200.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has not proven his case and therefore must bear the cost of filing his application.

### **Conclusion**

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$5,200.00**

The tenant's application is dismissed in its entirety.

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 26, 2016

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Residential Tenancy Branch

