



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNR, OPR, MNR, LRE, MNDC, RR

### 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. For an order of possess based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on November 16, 2015 (the "Notice");
2. For the cost of emergency repair;
3. For a monetary order for money owed or compensation for loss under the Act;
4. To suspend or set conditions on the landlord's right to enter;
5. To allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
6. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlords' application for order of possession and a monetary order for unpaid rent. The balance of the tenant's application is dismissed, with leave to reapply.

### Issues to be Decided

Should the Notice issued on November 16, 2015, be cancelled?  
Are the landlords entitled to an order of possession for unpaid rent?  
Are the landlords entitled to a monetary order?

### Background and Evidence

The parties agreed that the tenant was served with the Notice on November 16, 2015.

The tenant acknowledged that they did not pay the rent within five days because they believe they were entitled to withhold the \$200.00 from the rent, because they believe the landlord has breached the Act. The tenant acknowledged that the \$200.00 remains unpaid as of today's date.

The landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$200.00.

### 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.*

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 withheld and not paid within 5 days after receiving the Notice.

However, the tenant did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant was not successful with their application the tenant is not entitled to recover the filing fee from the landlord.

I find that the landlords are 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 landlords has established a total monetary claim of **\$250.00** comprised of unpaid rent and the \$50.00 fee paid by the landlords for this application. The landlords may retain this amount from the tenant's security deposit pursuant to section 38(4) of the Act, if this amount remains unpaid at the end of the tenancy or this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenant withheld rent without authority under the Act. The tenant's application to cancel the Notice is dismissed. The landlords granted an order of possession, and a monetary order in the above amount.

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 18, 2016

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Residential Tenancy Branch

