



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR OPR FF – Landlord’s application  
                                 MT CNR MNSD OLC FF

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant’s application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant’s request for more time to make the application and their request to set aside, or cancel the Landlord’s Notice to End Tenancy issued for unpaid rent. I dismiss the balance of the Tenant’s claim with leave to re-apply.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed on December 22, 2015, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on December 17, 2015 seeking more time to make her application and an Order to cancel the notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord’s wife, and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would

proceed. The Landlord and Tenant gave affirmed testimony. The Landlord's wife did not submit testimony during this hearing.

The Tenant confirmed receipt of the Landlord's application for Dispute Resolution, hearing documents and evidence. No issues were raised by the Tenant regarding service or receipt of those documents. Therefore, I accepted the Landlord's submissions as evidence for this proceeding.

The Landlord testified that he was not served a copy of the Tenant's application or the Notice of Dispute Resolution hearing documents. The Tenant testified that she served the Landlord at the same time the Landlord served her with his application and hearing documents. The Landlord disputed the Tenant's submission and asserted that he had served his documents to the Tenant via registered mail on December 24, 2015. The Canada Post tracking information was submitted during the Landlord's oral testimony.

Based on the above, I favored the Landlord's submission that he was not served a copy of the Tenant's application or notice of hearing documents. Accordingly, I dismissed the Tenant's application. That being said I allowed the Tenant to provide oral evidence regarding why she delayed in filing her application, which is noted below in the Background and Evidence section.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on August 1, 2015. The Tenant was required to pay rent of \$980.00 on the first of each month. On or before August 1, 2015 the Tenant paid \$490.00 as the security deposit.

The Tenant testified that she filed her application on line the same day she found the 10 Day Notice to end tenancy taped to her door. She stated that the Notice was posted to her door 3 or 4 days after it was issued.

I pointed the Tenant to her application where she indicated that she had received the Notice on December 10, 2015 and she filed her application on December 17, 2015. I also noted that the 10 Day Notice was issued by the Landlord on December 3, 2015. I ask the Tenant why she had testified here today that she filed her application on the

same day she received the Notice. The Tenant then stated that she had 7 days to file her application so she waited the full 7 days before she applied. She then stated that she could not get into the RTB office that day so she filed on line.

The Landlord testified that when the Tenant failed to pay her December 1, 2015 rent he posted the 10 Day Notice for unpaid rent to the Tenant's door on December 3, 2015 in the presence of his wife. The Landlord stated that he made several attempts to contact the Tenant and was unsuccessful. The Landlord submitted that the Tenant remains in the rental unit and has not paid any money towards rent for December 2015, January or February 2016. He seeks an Order of Possession and a Monetary Order.

The Tenant disputed the Landlord's submissions and stated that she attempted to pay her rent and the Landlord refused to accept it. She said part of her December 2015 rent had been paid directly to the Landlord from the Ministry of Social Development and the that cheque was returned to the Ministry. She argued that she attempted to pay the remaining portion to the Landlord and he refused to accept it.

The Landlord disputed the Tenant's submission and stated that he only ever received one cheque from the Ministry of Social Development and that was received in October 2015 as partial payment for November 2015 rent.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case I favored the Landlord's evidence that the Tenant was served the 10 Day Notice on December 3, 2015. I favored the Landlord's evidence as it was forthright, consistent, credible, and supported by documentary evidence. The Tenant contradicted her own submissions regarding when she received the Notice and when she filed her application for Dispute Resolution. I found the Tenant's submissions to be inconsistent and not credible throughout the entire hearing.

Section 62(2) of the Act stipulates, in part, that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Based on the above and in absence of credible submissions by the Tenant, I find the Tenant received the Notice to end tenancy on December 6, 2015, three days after it was posted to the door and the effective date was **December 16, 2015**. I further find the Tenant failed to file her application within the required 5 day period. Accordingly, I find the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the Notice, pursuant to section 46 of the *Act*. Accordingly, I grant the

Landlord's request for an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

It was undisputed that rent of \$90.00 was due on the first of each month. I accept the Landlord's submission that no rent was paid for December 2015, in breach of section 26 of the *Act*. Accordingly, I grant the Landlord's application for unpaid rent in the amount of **\$980.00**.

As noted above, this tenancy ended **December 16, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the rental unit for January 2016 and February 2016, not rent. I grant an amendment to the Landlord's application to award him compensation for January 2016 and February 2016 occupation, given the delay from the time the Landlord filed their application on December 22, 2015 to this February 4, 2016 hearing date.

As per the foregoing, I grant the application be amended to include the request for compensation for damage or loss under the *Act*, Regulation or tenancy agreement. I grant the request, in part, as it is reasonable to conclude that the Tenant would be expected to pay for their occupation of the rental unit until such time as the Landlord regained possession.

The Tenant continues to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession he is required to mitigate the losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the period of January 1, 2016 to February 15, 2016 in the amount of **\$1,470.00** (\$980.00 + \$490.00 which is 1/2 of \$980.00).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Landlord has been issued a Monetary Order in the amount of **\$2,500.00** (\$980.00 + \$1,470.00 + \$50.00) which must be served upon the Tenant and may be enforced through Small Claims Court.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Landlord has been successful with their application and was issued an Order of Possession and a Monetary Order in the amount of \$2,500.00. The Tenant's application was dismissed.

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: February 04, 2016

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Residential Tenancy Branch

