



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for the landlord to comply with the Residential Tenancy Act.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for the outstanding rent, a request to retain the security deposit towards the claim, and a request for recovery of the \$100.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

### Issue(s) to be Decided

The issues are whether or not to cancel or uphold a Notice to End Tenancy, and whether or not the landlord has established monetary claim against the tenant.

### Background and Evidence

The parties testified that this tenancy began on December 13, 2015 and that the present monthly rent is \$1300.00, due on the first of each month.

The parties further testified that at the beginning of the tenancy the tenant paid a security deposit of \$650.00.

The landlord testified that the tenant had failed to pay the July 2016 rent, and the August 2016 rent, for a total of \$2600.00 and therefore on August 15, 2016 a 10 day Notice to End Tenancy was posted on the tenant's door.

The landlord further testified that the tenant has failed to comply with that notice and has failed to pay any further rent and therefore as of today's date there is a total of \$3900.00 in rent outstanding.

The landlord is therefore requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding rent and recovery of the filing fee.

The tenant stated that she does not dispute that there is three months rent outstanding however she stated that it is due to extenuating circumstances. She stated that she was not paid for six months salary, she's been battling cancer, and her fiancé passed away all of which is put her under a significant financial strain.

The tenant further testified that she had hoped to pay all the outstanding rent in August 2015, however was unable to do so, but she now believes that she should be able to pay the full amount outstanding within 2 to 3 weeks, as she has just started working again this week.

The tenant is therefore requesting that she be given more time to pay the outstanding rent, and that the tenancy continues.

In response to the tenant's testimony the landlord testified that they are not in a position to wait any longer for the outstanding rent as they can't afford to carry this amount of debt.

### Analysis

Section 46 of the Residential Tenancy Act states:

**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.

In this case the landlord has served a 10 day Notice to End Tenancy and since the 10 days as well past, and there is now more rent outstanding, it is my decision that the landlord does have the right to an Order of Possession, and I will not cancel the Notice to End Tenancy.

Further, it is also my decision that since there is no dispute as to the amount of rent outstanding, I will issue an Order for that outstanding rent, totaling \$3900.00.

Further, as I have allowed the landlords full claim, I also allow the landlords request for recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 67 of the Residential Tenancy Act I have allowed the landlords full claim of \$4000.00, and therefore, pursuant to section 38 of the Residential Tenancy Act, I Order that the landlord may retain the full security deposit of \$650.00, and I have issued a Monetary Order in the amount of \$3350.00.

Pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession that is enforceable two days after service on the tenant.

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: September 20, 2016

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Residential Tenancy Branch

