



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated September 2, 2016
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- c. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2572 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant by placing it in her mailbox on September 2, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficient served on the other. With respect to each of the applicant's claims I find as follows:

The Tenant filed a monetary order work sheet claiming damages of \$5200. However, the tenant failed to make the claim in her Application for Dispute Resolution. I determined the tenant failed to properly bring a monetary claim in the Application for Dispute Resolution and that it was not appropriate to hear it in this hearing.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated September 2, 2016?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2012. The rent is \$1250 per month payable in advance on the first day of each month. The present rent is \$1286.

In June 2016 the landlord wrote the tenant asking that she provide the rent cheques in the name of a trust in the name of her father. The landlord explained that she was advised by her accountant this was necessary to prevent Revenue Canada complications.

The tenant took the position the trust was not her landlord and she continued to provide cheques in the name of the tenant. She testified she had been advised by the Branch that it was not necessary for her to change the name of the payee on the cheque. The cheques were returned. The tenant subsequently provided two money orders payable to MF.

The landlord testified at the hearing that the rental property has been transferred into the name of the trust and that it is necessary that the tenant pay rent to the trust.

Settlement:

During the hearing the parties reached a settlement and the asked that I record the settlement as follows:

- a. The landlord represents that the rental property has been transferred into the name of the trust.

- b. The Tenant shall provide the landlord with the two money orders in the name of MF being the rent for September and October. MF shall cash them and give a receipt from the trust.
- c. The tenant shall provide the landlord with all future rent cheques made payable to the trust.

Analysis

As a result of the settlement I ordered that the 10 day Notice to End Tenancy be cancelled. I dismissed the landlord's application for an Order for Possession and a monetary order and an order to keep the security deposit.

I dismissed the application of both parties to recover the cost of their filing. This matter should have been settled without the need for litigation.

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: October 28, 2016

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Residential Tenancy Branch