



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF, CNC, CNR,

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to unpaid rent; a monetary order to recover unpaid rent; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenant filed to cancel a 1 Month Notice To End Tenancy for Cause; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the cost of the filing fee.

The Matter was scheduled for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord’s agent D.Z. testified that the Landlord did not provide the Tenant with a copy of the Landlord’s documentary evidence. The Landlord’s agent testified that he did not understand the requirement to provide the evidence to the Tenants.

Since the Tenants were not provided with the Landlord’s evidence, it would be unfair to the Tenant’s for me to consider the Landlord’s evidence. The Landlord’s five pages of evidence received at the Residential Tenancy Branch on November 16, 2016, will not be considered in this hearing.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to keep the security deposit?
- Should the 1 month Notice to End Tenancy for Cause be cancelled?
- Are the parties entitled to recover the cost of the filing fee?

### Background and Evidence

The Parties testified that the tenancy began on July 1, 2013, as a month to month tenancy. Rent in the amount of \$1,000.00 is due on the first day of the month. The Tenants paid the Landlord a security deposit of \$500.00.

#### The 10 Day Notice for Unpaid Rent

The Landlord testified that the Tenants are often late paying their rent and there is a large amount of rent money in arrears.

The Landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 28, 2016, ("the 10 Day Notice") was served to the Tenants using Canada Post Registered Mail. The 10 Day Notice indicates the Tenant owes the Landlord the amount of \$4,700.37 for rent that was due on October 1, 2016. The 10 Day Notice has an effective date of November 13, 2016.

The Tenant testified that he received the 10 Day Notice via Registered Mail on November 6, 2016.

The Tenants advocate D.J. submitted that the Tenant did not receive the 10 Day Notice until November 8, 2016, due to Canada Post not providing a notification card to the Tenant until November 6, 2016. The Tenant provided documentary evidence of the Canada Post notification card showing a date of November 6, 2016.

The 10 Day Notice states that a Tenant has the right to dispute the Notice within 5 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenants amended their Application for dispute resolution to include the 10 Day Notice on November 8, 2016.

The Landlord is seeking an order of possession and a monetary order for unpaid rent in the amount of \$4,811.24

In response to the Landlord, the Tenant testified that he agrees he owes the Landlord money for rent. He testified that previously the parties had a similar situation and he was permitted to stay and pay the rent late. The Tenant requested that the Landlord allow him to remain as a Tenant and pay the rent late. The Tenant testified that there is no argument from him that he owes rent money to the Landlord.

The Landlord replied that he is seeking to end the tenancy and requested an order of possession due to unpaid rent.

The Landlord was asked to clarify his claim for a monetary order for unpaid rent. The Landlord had difficulty explaining the breakdown of the rent owing. The Tenant testified that he agrees he owes the Landlord \$4,700.00 for unpaid rent. The Landlord agreed that the Tenant owes the Landlord \$4,700.00.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Section 26 of the Act states that 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.

The Tenants failed to pay the Landlord rent when it was due and failed to pay the outstanding rent within five days of receiving the 10 Day Notice To End Tenancy for Unpaid Rent or Utilities. The Tenant testified that he owes the Landlord \$4,700.00.

The Tenant's Application to cancel the 10 Day Notice is dismissed. The Tenancy is ending.

The effective date of the 10 Day Notice has passed. I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlord \$4,700.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$500.00 in partial satisfaction of the Landlord's claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord's Application was successful. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,800.00 comprised of \$4,700.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$500.00 towards the claim of \$4,800.00, I find that the Landlord is entitled to a monetary order in the amount of \$4,300.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Since the tenancy has ended based on the 10 Day Notice, there is no need to consider the 1 Month Notice To End Tenancy For Cause dated September 30, 2016.

### Conclusion

The Tenants failed to pay the rent. The Landlord is granted an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants.

I order that the Landlord can keep the security deposit in the amount of \$500.00 in partial satisfaction of the claim.

The Landlord is granted a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$4,300.00.

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: December 1, 2016

---

Residential Tenancy Branch