



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, OPR, MNR, MDSD & FF

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 March 6, 2018
- b. An order to suspend or set conditions on the landlords' right to enter the rental unit.
- c. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- d. 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 \$8400 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The landlord(s) failed to appear at the scheduled start of the hearing which was 9:00 a.m. on May 28, 2018. The tenant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed(s) to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 Notice to End Tenancy was served on the Tenant by registered mail which he received on March 11, 2018. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord carries on business on March 18, 2018.

### 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 March 6, 2018?
- b. Whether the tenant is entitled to an order suspending or setting conditions on the landlords' right to enter the rental unit.
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?

- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant and WI entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2016 and end on October 31, 2017 and become month to month after that. The rent is \$1400 per month payable on the first day of each month. The tenant paid a security deposit of \$700 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified he picked up the registered mail package containing the 10 day Notice to End Tenancy on March 11, 2018. The tenant provided documentary evidence that he paid \$900 by e-mail transfer on March 6, 2016 and \$400 on March 16, 2018 for a total of \$1300. In addition he was entitled to deduct \$100 from the rent for March as he was successful in an application pursuant to a decision made by an arbitrator the middle of March. The tenant submits the Notice to End Tenancy is void as the rent was paid within 5 days of receiving the Notice to End Tenancy.

Tenant's Application:

I determined the tenant has established sufficient cause for an order cancelling the 10 day Notice to End Tenancy dated March 6, 2018. The tenant was entitled to apply the cost of the filing fee in the sum of \$100 to future rent. The balance of the rent was paid within 5 days on receiving the Notice to End Tenancy and as a result the Notice to End Tenancy dated March 6, 2018 is void.

I declined to make an order that the landlord comply with the Act, Regulations and/or tenancy agreement as there does not appear to be an issue between the parties now that the agent is handling the matter on behalf of the landlord

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. t I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further order that the landlord pay to the tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

Landlord's Application - Order of Possession:

The landlord failed to attend the hearing. For the reasons set out above I dismissed the landlord's application for an Order of Possession without liberty to re-apply.

Analysis - Monetary Order and Cost of Filing fee:

The landlord sought a monetary order in the sum of \$8400. The landlord failed to attend the hearing and on that basis alone I dismissed the landlord's application without liberty to re-apply.

The monetary order worksheet filed by the landlord claim rent of \$1400 for each of the months of May 2017, October 2017, November 2017 and December 2017 for a total of \$5600. This claim was dismissed in the previous arbitration and decision binds the parties.

In addition the landlord claimed rent of \$1400 for April 2018 and \$1400 for May 2018. The tenant testified those sums have been paid although they were paid late as there was confusion in the transition from the landlord to the management company. I accept the testimony of the tenant and I dismissed the claim for non-payment of rent for April 2018 and May 2018 without leave to re-apply. As the landlord has not succeeded I dismissed the landlord's claim to recover the cost of the filing fee.

Conclusion:

In conclusion I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue. I ordered that the landlord pay to the tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent. I dismissed the landlord's application without leave to re-apply.

**This decision is final and binding on the parties.**

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: May 28, 2018

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Residential Tenancy Branch