



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNR, MND, FF

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenant application is seeking orders as follows:

1. To cancel a 10 Day Notice for Unpaid Rent (the "Notice");
2. For a monetary order for money owed;; and
3. To recover the cost of filing the application.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Should the Notice to end tenancy be cancelled?

Is the tenant entitled to monetary compensation for damages?

### Background and Evidence

The parties agreed that the tenancy began on December 1, 2013. Current rent in the amount of \$1,445.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00.

### Landlord's application

The landlord submits that they served the tenant with a Notice to end tenancy on August 21, 2018, which relates to unpaid rent for September and October 2015. The landlord acknowledged the rent was recently paid by the tenant's insurance company.

The landlord submits the tenant has not paid rent for September and October 2018, but has not issued a notice to end tenancy.

The tenant acknowledged they have not paid rent for September and October 2018, because they withheld it due to their claim.

### Tenant's application

The tenant submits in their application that they seek damages that related to a fire that was in their rental unit in 2015.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

#### Landlord's claim

In this case, the landlord has received from the tenant's insurance company the rent that was due for September and October 2015. While the landlord issued a notice to end tenancy, I find it would be unreasonable and unfair to end the tenancy for a matter that related to a fire in 2015. I find the landlord had a duty to mitigate this matter within a reasonable timeframe. Therefore, I dismiss the landlord's application for an order of possession without leave to reapply.

The tenant acknowledged that they have failed to pay rent for September and October 2018. The landlord has not issued a notice to end tenancy for these months. Therefore, I cannot consider this as grounds to end the tenancy at today's hearing.

However, based on the evidence, I find that the tenant has been late paying rent on these two occasions, September 2018 and October 2018, any further late payments of rent within the next 12 months, the landlord may have grounds to end the tenancy for cause.

**I Order the tenant** to pay the outstanding rent forthwith, should the rent not be paid forthwith the landlord is entitled to issue a 10 Day Notice to End Tenancy for Unpaid rent.

#### Tenant's application

In this case the tenant's application for monetary compensation is simply in response to the landlord issuing a notice to end tenancy for unpaid rent that was due in 2015. The tenant's claim is related to the 2015, fire.

I find the tenant is not entitled to compensation from the landlord as this fire was caused by the tenant. The tenant was required to pay the landlord rent during the repair period and seek from their insurance company compensation, if they were required to live elsewhere.

At no time is the landlord the tenant's insurer. I find the tenant had a duty to mitigate this matter with their insurance company within a reasonable timeframe. Therefore, I dismiss the tenant's application without leave to reapply.

### Conclusion

The landlord's application is dismissed. The tenant's application is dismissed. Neither party is entitled to the cost of their filing fee.

The tenant must comply with my Order forthwith.

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 12, 2018

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Residential Tenancy Branch