



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MT, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant's Application is seeking more time to dispute a 10 day Notice to End Tenancy for unpaid rent, an order to cancel the 10 day Notice to End Tenancy for unpaid rent and to recover the filing fee for the Application.

The Landlord initially filed a claim under the Direct Request process; however, that application was adjourned to today to be heard with the Tenant's application. The Landlord has applied for an order of possession based on unpaid rent, and requested a monetary order for unpaid rent and to recover the filing fee for the Application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

As both parties filed applications and these were scheduled to be heard at the same time, and appeared at the hearing, service of the applications and Notice of Hearing is not in issue.

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 Issue

I note there is a great deal of acrimony between the parties and the Landlord has alleged the Tenant or her daughter gave him a fraudulent cheque. I explained to the Landlord this was an allegation that should be taken up with the police.

I also advised both the Landlord and the Tenant to follow the Act and the applicable laws.

### Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

The submitted evidence indicates this tenancy began on July 1, 2018, with the parties entering into a written, one year fixed term tenancy agreement. The Landlord testified that the monthly rent for the rental unit is \$1,500.00, which is due on the first day of the month, and explained the Tenant paid only a portion of her a security deposit in the amount of \$250.00.

Based on the evidence of both parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on August 9, 2018.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenant applied to cancel the Notice as described above.

However, at the time of the hearing the Tenant testified she no longer wished to dispute the 10 day Notice to End Tenancy, and the Tenant agreed she had not paid the Landlord rent for July, August, September and October of 2018. She explained she knows the tenancy is ending and has secured a different rental unit and will be moving there.

The Landlord is claiming for \$6,000.00 in unpaid rent and the \$100.00 filing fee for the Application.

### Analysis

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

I find that the Tenant has not paid all the rent due to the Landlord, and therefore, the 10 day Notice to End Tenancy is valid and should not be cancelled. Under section 26 of the Act, the Tenant could not withhold rent unless she had an order from the Residential Tenancy Branch allowing her to do so, or, if the Tenant had paid for emergency repairs in accordance with section 33 of the Act. I find the Tenant had no order, nor did she have any evidence she had paid for emergency repairs. This leads me to find the Tenant had no authority under the Act to withhold rent from the Landlord.

Furthermore, the Tenant agreed she owed the Landlord this rent and withdrew her request to cancel the Notice to End Tenancy.

Therefore, I dismiss the Application of the Tenant entirely, without leave to reapply, and allow the Application of the Landlord.

Having found the Tenant has failed to pay all rent when due, I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I also find that the Landlord has established a total monetary claim of \$6,100.00, comprised of \$6,000.00 in rent due for July, August, September and October of 2018, and the \$100.00 fee paid by the Landlord for this application.

Pursuant to section 72 of the Act, I order that the Landlord retain the partial deposit of \$250.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$5,850.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As mentioned above, I note that the parties have had a very poor business relationship and are unable to communicate effectively. Therefore, I order that the Landlord may serve this Decision and the Orders granted by posting these to the door of the rental unit. In the alternative, the Landlord may have his spouse deliver the Decision and

Orders to the Tenant personally. I order that service in either manner will be effective service under section 71 of the Act.

I also note that the Tenant informed the Landlord at the end of the hearing that she would not be leaving the rental unit until the Landlord had a Bailiff remove her. The Tenant should be aware that the Landlord may claim against her for the cost of ending this tenancy, included court and bailiff fees.

The Landlord intimated he would not likely use a Bailiff. The Landlord was cautioned that enforcing the order of possession through Supreme Court and using a Bailiff to remove the Tenant is the only legal method of removing the Tenant. Otherwise the Landlord may be subject to monetary claims from the Tenant and/or to Administrative Penalties under the Act.

Both parties were reminded that a tenancy is a business relationship and they each have to follow the applicable laws, and apply due diligence in deciding to do business with each other from the outset.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 16, 2018

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Residential Tenancy Branch