



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

**Dispute Codes:** MNR, OPR, FF

## **Introduction**

This hearing was originally heard on January 19, 2011 and the landlord had been successful. The tenant requested and was granted a review hearing on the basis of possible fraud on the part of the landlord.

The hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 4, 2011 2, 2009 and a monetary order for \$1,700.00 rent owed. The application also made mention of an unpaid pt damage deposit and a \$425.00 credit that was granted to the tenant for yard work that was not done. Both parties appeared and gave testimony during the conference call.

## **Preliminary issue**

At the outset of the hearing, the landlord advised that the tenant paid all arrears for January 2011 in full, but the payment was not made within the 5-day deadline allowed in order to cancel the notice. The landlord also testified that no receipt was given stating that the payment was being accepted "for use and occupancy only". The landlord added that rent for February was not received yet.

However, the tenant disputed the landlord's allegation that the rental arrears were not paid on time and stated that a money order dated January 5, 2011 was delivered in person to the landlord's mail box on January 7, 2011. The tenant supplied copies of the money orders and a signed declaration confirming the date that the funds were dropped off. In regard to February rent, the tenant stated that she attempted to deliver a cheque to the landlord's mailbox on February 1, 2011, but was told that mail given in person would no longer be accepted. On February 2, 2011, the tenant mailed the cheque.

Given that the tenant relied on the landlord to pick up the rent each month and the fact that the tenancy agreement did not contain the landlord's service address, I find it understandable that the tenant would have difficulty finding a way to pay the rental arrears within the required five days after receiving the Notice. However, in this instance I find that the tenant did repay all of the arrears within the required five days. Accordingly the Ten Day Notice to End Tenancy for Unpaid Rent dated January 4, 2011 is cancelled and of no force nor effect.

Even if I accepted the landlord's testimony that the tenant had not paid the arrears until January 13, 2011, I find that section 11 of the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue.

In this instance I find that the landlord did not issue a receipt nor advise the tenant that the acceptance of the payment was for "use and occupancy only" and would not reinstate the tenancy. Therefore I still would have found that the tenancy was reinstated by the landlord.

The issues regarding the landlord's allegation that a pet damage deposit was owed and that a \$425.00 credit was allegedly given to the tenant, were found not to be enforceable terms under the Act or agreement because of a lack of written verification to establish that these terms were agreed-upon by the parties.

A mediated discussion ensued and both parties mutually accepted the following:

- By consent of the parties, the landlord will be granted an Order of Possession effective March 31, 2011 at 1:00 p.m. which must be served on the tenant.
- On or before Friday February 25, 2011, the tenant will ensure that the original February rent cheque already mailed has not been cashed and will place a stop-payment on this cheque.
- On or before Friday February 25, 2011, the tenant will send by registered mail to the landlord, at the address shown on the application, a new rent cheque for February's rent in the amount of \$1,690.00 and a second rent cheque dated March 1, 2011 in the amount of \$1,700.00.

### **Conclusion**

I hereby grant the landlord an Order of Possession for March 31, 2011. Pursuant to an agreement between the parties, I further order that the tenant will replace the original rent cheque sent for February with two cheques representing rent owed for February 2011 and March 2011 in the amount of \$1,699.00 and \$1,700.00 respectively and that these will be mailed to the landlord by registered mail on or before February 25, 2011. The landlord is not entitled to be reimbursed for the cost of the Application.

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: February 18, 2011.

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Residential Tenancy Branch