



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, MNDC, FF.

### **Introduction**

This hearing dealt with an application by the landlord, pursuant to the *Residential Tenancy Act* for the following:

- An order of possession based on a Ten Day Notice to End Tenancy for Unpaid Rent.
- A monetary order for rental arrears.
- The cost of the application.

This hearing dealt with a cross application by the tenant, pursuant to the *Residential Tenancy Act* for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46.
- A monetary order in compensation for costs incurred by the tenant pursuant to section 67 of the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the outset of the hearing the parties advised that the tenant had vacated the rental unit and relinquished possession as of January 12, 2013. Therefore the landlord's request for an Order of Possession and the tenant's application to cancel the Notice are now moot.

### **Preliminary Issue Tenant's Monetary Claim**

In regard to the tenant's monetary claim, which has been filed under section 7 and 67 of the Act, I find that this matter is not connected to the other issue relating to the tenant's request for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent issued under section 46 of the Act.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, I found that the tenant's monetary claim pertained to a separate and distinct section of the Act that was not connected to the matters concerning the 10-Day Notice to End Tenancy for Unpaid Rent. The tenant also disclosed that she has recently filed another dispute resolution application seeking monetary compensation, which is scheduled to be heard on March 7, 2013.

Accordingly, I find that the monetary portion of this application should be severed and the matter dealt with through an application under section 67 of the Act. Therefore, the tenant's request for a monetary order is dismissed with leave to reapply.

This hearing will therefore only proceed with respect to the landlord's request for monetary compensation for rental arrears.

#### **Preliminary Issue Service of the Ten Day Notice to End Tenancy for Unpaid Rent**

The tenant claimed that the Ten Day Notice to End Tenancy for Unpaid Rent dated January 6, 2013 was not properly served. According to the tenant, they only received the first page of the two-page Notice.

The landlord disputed this allegation and testified that both the first and second pages were served by attaching them to the tenant's door in front of a witness. The landlord pointed out that the Notice submitted into evidence was a copy of what was served confirming that the served Notice consisted of both pages.

I accept that the tenant was properly served with a complete Ten Day Notice to End Tenancy for Unpaid Rent. I find that the second page of the Notice contains information about how to dispute the Notice and it is clear that the tenant was aware of this information as evidenced by the fact that the tenant had followed the directions and disputed the Notice by making an application for dispute resolution. In any case, after already filing to dispute the Ten Day Notice to End Tenancy for Unpaid Rent, the tenant then subsequently accepted the Notice and vacated the rental unit.

#### **Issues to be decided**

Is the landlord entitled to monetary compensation for rental arrears owed?

#### **Background and Evidence**

The tenancy started on in October 2012 at a rental rate of \$2,600.00 per month and a security deposit of \$1,300.00 was paid.

Submitted into evidence by the landlord in support of the claim for rental arrears was a copy of both pages of the Ten Day Notice to End Tenancy for Unpaid Rent dated January 9, 2013, a copy of the tenancy agreement, proof of service, copies of two returned cheques dated November 17, 2012 and December 19, 2012, copies of communications and written testimony. The tenant submitted evidence including written testimony, personal medical information, copies of correspondence, copies of invoices and reference letters.

Only the evidence relevant to the issue before me, that being the matter of the landlord's monetary claim for rental arrears, was considered.

The landlord testified that the tenant failed to pay \$700.00 of the \$2,600.00 rent payment that was due on November 1, 2012. The landlord testified that the tenant later gave the landlord a cheque for \$700.00 on November 17, 2012, which was returned by the bank for insufficient funds. A copy of this returned cheque is in evidence. The landlord testified that the tenant then gave the landlord a replacement cheque for \$700.00 on December 19, 2012. The landlord stated that this cheque was also returned for insufficient funds. A copy of the second returned cheque is also in evidence.

The landlord testified that, after several unfulfilled promises to pay the arrears, the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent on January 9, 2013 and attached the Notice to the tenant's door. A copy of the Notice is in evidence.

The landlord testified that the tenant did not pay the outstanding arrears and accrued arrears totaling \$8,500.00, including \$700.00 outstanding for November 2012, \$2,600.00 for December 2012, \$2,600.00 for January 2013 and \$2,600.00 for February 2013.

The tenant disputed the alleged debt of \$700.00 claimed by the landlord as being still owed for November 2012. The tenant testified that, after her two cheques dated November 17, 2012 and December 19, 2012, were rejected by her bank, she then paid the landlord in cash by leaving the \$700.00 in an outside mailbox, as instructed by the landlord. The tenant testified that the landlord refused to give receipts for the rent paid in cash.

The tenant acknowledged that she had not paid any rent for December 2012, January 2013 or February 2013, but stated that the reason for this was because she feels that she is owed compensation from the landlord and will be seeking these damages in a separate claim for dispute resolution that she has already filed.

**Analysis:**

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement. If rent or utilities are in arrears, a landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act. I find that the landlord issued and served the Notice and I accept that the tenant did not pay the arrears owed. With respect to the tenant's testimony that she had paid \$700.00 in cash after her two cheques had been returned by her bank for insufficient funds, I find that this is unlikely on a balance of probabilities and I accept the landlord's evidence that the funds owed for November in the amount of \$700.00 were never paid to the landlord.

Based on the preponderance of evidence, I find that the landlord is entitled to monetary compensation in the amount of \$8,600.00, comprised of \$700.00 outstanding for November 2012, \$2,600.00 for December 2012, \$2,600.00 for January 2013, \$2,600.00 due on February 1, 2013 and the \$100.00 cost of the application.

I order that the landlord retain the tenant's \$1,300.00 security deposit in partial satisfaction of the claim leaving a balance of \$7,300.00 remaining still owed to the landlord.

I hereby issue a monetary order in the amount of \$7,300.00 in favour of the landlord. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

**Conclusion**

The landlord is successful in the application and is granted a monetary order for rental arrears. The request for an Order of Possession is moot as the tenant has vacated the unit and the tenant's request for monetary compensation is dismissed with leave to reapply.

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 13, 2013

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Residential Tenancy Branch