



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNDC, MNSD, OLC, FF

### Introduction

This was a hearing with respect to applications by the landlord and the tenant. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Is the tenant entitled to a monetary award and if so in what amount?

Is the tenant entitled to any other relief, including an order that the landlord comply with the Act, Regulation or tenancy agreement?

### Background and Evidence

The rental unit is a suite in the landlord's house in Surrey. The tenancy began in early 2012. The tenant and her common-law spouse were the original tenants. The landlord's representative testified that there was a domestic dispute between the tenant and her spouse and in August 2012 she moved out of the rental unit, leaving her spouse as a tenant. According to the landlord she was removed by the police. Thereafter the husband continued as the sole tenant.

The landlord said that the female tenant returned to the rental property in late December, but soon after there were disputes between the tenants and the police were called and attended on several occasions. According to the female tenant, her spouse was arrested and removed from the rental unit by the police on February 6, 2013 after he assaulted her.

The landlord testified that the tenant has not paid rent. He met with the tenant after her husband was removed from the property. On February 13, 2013 the tenant signed a written agreement whereby she agreed that she would remove her belongings and move out of the rental unit by February 22, 2013. The landlord's representative produced a handwritten document signed by the tenant and by the landlord's representative setting out the agreement that the tenant would move out by February 22, 2013. He said that rent was not paid for February and he agreed to forego rent for the month of February provided that the tenant moved as agreed.

The tenant did not move and on March 1, 2013 the landlord issued a 10 day Notice to End Tenancy for unpaid rent. The Notice alleged that the tenant failed to pay rent in the amount of \$2,625.00 and \$250.00 in utilities that was due on March 1, 2013. The Notice required the tenant to move out of the rental unit by March 10, 2013.

The tenant applied to cancel the Notice to End Tenancy. She claimed at the hearing that the landlord is refusing to accept her rent payments and she said that she signed the agreement to end the tenancy under duress after the landlord appeared at the rental property and threatened and harassed her until she signed the document.

The landlord denied harassing the tenant. He said she agreed to move out because she was unable to afford the rent after her spouse was removed from the property and she agreed to move because the landlord forgave the rent for February. The landlord said that he has not refused to accept rent from the tenant. The tenant has not paid rent and has not offered to pay it, but he does not want to have the tenant residing in the rental unit; he did not agree to accept her as a tenant when she returned to the rental property and he does not agree now to have her as the sole tenant. The landlord said that, contrary to the tenant's accusations, the police have attended at the rental property to deal with disturbances caused by the tenant and her family. He said that he attended at the rental unit on February 22<sup>nd</sup>, expecting to find that the tenant had moved out as agreed and found that she had not moved and also that she refused to pay rent. The landlord said that most recently the tenant's daughter had to be removed from the property by the police when she was there drunk and disturbing other occupants.

The landlord testified that the monthly rent is \$1,050.00 plus a portion of the utilities. The tenant disputed this amount and said that the rent was \$950.00 per month plus \$100.00 for utilities. She said that the tenants paid a \$525.00 security deposit in February, 2012. Neither party produced a copy of a tenancy agreement. The landlord claimed that including the month of April there is \$3,675.00 owed for rent and utilities. The landlord also said there will be additional charges for garbage removal and dump charges.

### Analysis

The tenant did not provide any documentary evidence to establish that she has paid any amount for rent. The tenant signed what amounts to a mutual agreement to end tenancy; consideration for the agreement was the forgiveness of rent by the landlord. I did not find the tenant's claims of duress or harassment by the landlord to be credible or convincing. The tenant's relationship with her common-law husband has been violent and chaotic; the police have been in attendance on several occasions because of disputes between the tenants; I did not find the tenant's claims that the landlord has been violent or coercive to be convincing; she points to police attendances as evidence of the landlord's conduct, but there is no evidence from the police to support the tenant's claims and her recital of a police file number with nothing more is not convincing evidence, given the regular attendance of the police to deal with domestic disturbances and the fact that a restraining order was apparently issued to keep the tenant's husband away from the rental property.

I find that the tenant made a valid and binding mutual agreement to end tenancy that obliged her to move out of the rental unit. The tenant submitted evidence to support her position that the rental property is in need of repairs and she suggested that the landlord wanted to evict her to avoid having to make repairs. The landlord denied that repairs are necessary; he submitted his own photographic evidence intended to show that the tenant has caused significant damage to the rental property. The tenant did not provide evidence of any written requests for repairs and has not provided evidence of any ground under the *Residential Tenancy Act* to withhold rent payments to the landlord.

I find that the tenant has not paid rent from February onwards, and that there is no basis to cancel the 10 day Notice to End Tenancy for unpaid rent. The tenant's application to cancel the Notice to End Tenancy is therefore dismissed without leave to reapply. In the absence of a tenancy agreement setting out the provisions regarding payment of rent and utilities, I find that the monthly rent payable is the sum of \$1,050.00 inclusive of utilities. I find that no rent has been paid for the months of February, March and April and I award the landlord the sum of \$3,150.00 as unpaid rent for those months. Other claims by the landlord for cleaning or damage are premature and should be addressed after the tenant has vacated the rental unit.

In the tenant's application set for hearing on May 16, 2013 she claimed payment of the sum of \$1,375.00. She repeated her claims that the landlord harassed her and pressured her into signing an agreement to move out of the rental unit. In the application she claimed payment of her moving costs plus her deposit and first month's

rent. In light of my findings in this proceeding, there is no basis for the tenant's claims in the upcoming application and it is also dismissed without leave to reapply.

Conclusion

I grant the landlord an order for possession effective two days after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

I award the landlord the sum of \$3,150.00 for unpaid rent. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$3,200.00. I order that the landlord retain the security deposit of \$525.00 that he holds and I grant the landlord an order under section 67 for the balance of \$2,675.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: April 12, 2013

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Residential Tenancy Branch

