



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR, FF

For the tenant – CNR, FF, O

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel a Notice to End Tenancy; to recover the filing fee from the landlord for the cost of this application; and other issues.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch however the tenant's evidence was not provided to the landlord has therefore not been considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the tenant entitled to have the Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this month to month tenancy started sometime around September 01, 2008. Rent for this unit is \$800.00 per month and is due on the first day of each month.

The landlord's agent testifies that the tenant owed rent for October, November and December, 2011 and for January, February, September and December, 2012 and for January, 2013. The landlord's agent testifies that as they had always had a good relationship with the tenant previously they did not give the tenant rent receipts for cash payments and did not serve the tenant with any 10 day Notices when the rent was not paid. However after the rent was unpaid for December 2012 and January, 2013 the landlord did serve the tenant with a 10 Day Notice to End Tenancy for unpaid rent on January 29, 2013. The tenant then paid the landlord the outstanding rent for December and January by certified cheque for \$1,600.00 which was deposited into the landlords account on February 11, 2013.

The landlords agent testifies that the tenant failed to pay rent for February, March and April 2013 and another 10 Day Notice was served upon the tenant in person on April 25, 2013 and by posting it to the tenants door. The landlord's agent testifies that as they are unfamiliar with the 10 Day Notices they only entered the amount owing for April, 2013 of \$800.00 where as the actual amount outstanding at that time was \$2,400.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 04, 2013. The landlord's agent testifies that the tenant has paid no rent since the 10 Day Notice was served and now also owes rent for May, 2013. The landlord's agent testifies that an error was made on the application when calculating the rent arrears and the landlord had claimed \$9,600.00. The landlord's agent seeks to amend the application as the total amount of rent arrears for 2011, 2012 and 2013 is \$8,800.00 and the landlord seeks a Monetary Order to recover this amount.

The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputes the landlords claim. The tenant testifies that she has always paid her rent to the landlord in cash with the expectation of the certified cheque which was paid this year in February. The tenant testifies that the landlord has never given the tenant a rent receipt and up until the landlord filed this application the landlord has never mentioned any

rent arrears for 2011 and 2012. The tenant testifies that no rent is outstanding for either 2011 or 2012.

The tenant testifies that rent was unpaid in January as the tenant was waiting for her student loan to come through and the tenant gave the landlord a certified cheque for \$1,600.00 for rent for January and February, 2013. The tenant disputes that this was for December, 2012 rent as stated by the landlord. The tenant testifies that she paid rent for March, 2013 in cash to the landlord's agent but does not recall the date it was paid. The tenant testifies that rent for April and May, 2013 was paid to the landlord's agent on April 25, 2013 in cash.

The tenant seeks to have the 10 Day Notice cancelled but states she is in the process of packing her belongings to move out by June 01, 2013. The tenant also seeks to recover her filing fee of \$50.00 from the landlord.

The landlord's agent cross examines the tenant and asks the tenant why the tenant did not ask for a rent receipt if the tenant thought the landlord was going to say the tenant had not paid the rent. The tenant responds that she did not ask for a receipt as there has never been a problem until now. The landlord refers to the text messages provided in evidence and asks the tenant why the tenant said in one of these messages that she didn't know when she would have the rent. The tenant responds that she paid the rent that afternoon. The landlord's agent asks the tenant when the tenant paid the rent. The tenant responds that she paid it to the landlord's agent at 1.00 p.m. at the home

The landlord's agent testifies that he is working in an office until after 5.00 p.m. and the tenant could not have paid the landlord's agent any rent at 1.00 p.m.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent and the tenant. Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

With regard therefore to the landlords claim for unpaid rent I have considered the evidence presented and find the landlord has provided no rent ledgers from 2011 and 2012 to show outstanding rent and no 10 Day Notices were issued during that period. I am not therefore prepared to consider the landlords claim for unpaid rent for 2011 and 2012 as a landlord must bring an application in a timely manner. I will however consider the landlord's application for unpaid rent for 2013 as the landlord has served the tenant with two separate 10 Day Notices during that period and has provided evidence of a text conversation between the parties concerning the rent.

When a tenant testifies that rent has been paid the tenant would have the burden of prove to show some evidence to support her claim that rent was paid in cash to the landlord. When it is one person's word against that of the other then the burden of proof is not met. Furthermore, I find the landlord's evidence more compelling as to the rent outstanding. Consequently I find in favor of the landlords claim for unpaid rent for February, March, April and May, 2013. The landlord is therefore entitled to a monetary award to the amount of **\$3,200.00** pursuant to s. 67 of the *Act*.

As the landlord has been partially successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing of **\$3.250.00**.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on April 25, 2013 and the effective date of the notice is amended to May 05, 2013 pursuant to section 53 of the *Act*. The tenant did apply to cancel the Notice within the five days but as I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under

section 46 (4) of the *Act* I find the landlord is entitled to an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,250.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without 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: May 29, 2013

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Residential Tenancy Branch

