



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR, MNDC, OLC, LRE, LAT, FF, O

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants have put on the applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the landlord's request for an Order of Possession based on the Notice to End Tenancy for nonpayment of rent, and the landlord's request for a Monetary Order for outstanding rent, and I will deal with the tenant's application to cancel the Notice to End Tenancy that was given for nonpayment of rent. I will also deal with the request for recovery of the filing fees for both applications.

I dismiss the remaining claims with liberty to re-apply.

### Issue(s) to be Decided

The first issue is whether or not the landlord has established a monetary claim for outstanding rent in the amount of \$5000.00.

The second issue is whether or not to uphold or set aside a 10 day Notice to End Tenancy.

### Background and Evidence

The Landlord testified that:

- The monthly rent for this unit is \$2500.00.
- The rent is been unpaid for this unit since July of 2013, for a total of \$17,500.00.
- He has been awarded a portion of the outstanding rent in a previous hearing in which the Arbitrator ordered that the tenant pay \$12,500.00 in back rent to the end of November 2013.
- The tenant has failed to pay any of that \$12,500.00, and has now failed to pay any rent for the months of December 2013, in January 2014.
- On December 12, 2013 he personally served the tenant with a 10 day Notice to End Tenancy for nonpayment of rent.

- He is therefore requesting an Order of Possession for as soon as possible, and an Order for the outstanding \$5000.00 rent.

The tenant testified that:

- He did receive the 10 day Notice to End Tenancy from the landlord; however he believes it was illegally served using threats and intimidation and therefore as a result it should not be considered.
- When he attempted to serve it on me I told him to just put it on the door, however when I went to close the door he burst in and grabbed me and threatened physical violence.
- The landlord then stuffed the Notice to End Tenancy down my shirt and then made further threats of violence.
- The landlord forced me to hold the Notice to End Tenancy for a picture which he took with his phone.
- Therefore since this was an illegally served document he believes that it should be set aside.
- He does not dispute that there is an Order against him for \$12,500.00, nor does he dispute that he is not paid the December 2013, in January 2014 rent for a total of \$5000.00, however the reason he has not paid this money is because he has feared for his life due to the landlord's threats, and has locked himself in the rental unit for his own safety.
- He has therefore not been able to work to collect monies owed to him so that he could pay the outstanding amounts.
- He therefore believes that the landlord's application should be totally dismissed.

In response to the tenant's testimony the landlord testified that:

- He has never threatened the tenant, these are all fabrications made up by the tenant to try and avoid his responsibilities.
- The tenant made the same claims to the police; however no charges have ever been laid, because these alleged threats were never made.

### Analysis

First of all I want to state that it is not my job to determine whether or not actions taken during the service of a document are illegal, and if the tenant believes that the landlord's actions were illegal, it's an issue he will have to deal with through the police.

That being said the burden of proving a claim lies with the person making the claim, and in this case since it is just the tenant's word against that of the landlord, the tenant has not met the burden of proving his claim of threats and intimidation.

I also want to state that the tenant requested that I hear testimony from his son regarding the service of the Notice to End Tenancy; however at the beginning of the hearing I asked if there was anyone else participating in the hearing and both the landlord and the tenant stated there was not.

The tenant did not request testimony from his son, until after I asked why he had supplied no evidence supporting his claim regarding service of the Notice to End Tenancy, at which point he stated that his son is right here with him and could give testimony.

I declined to accept testimony from the tenant's son, as the tenant had not revealed that his son had been present during all of his testimony, and therefore it was my finding that his son's testimony would have been tainted from overhearing his father's testimony.

Secondly the tenant has admitted that he received the Notice to End Tenancy on December 12, 2013.

The Residential Tenancy Act does state the documents must be served in a certain manner, however if the documents are not served in that manner yet the party admits receiving the document, that document is still considered served and it does not invalidate the document.

The tenant has also admitted that he has not paid the \$12,500.00 in back rent ordered in the previous hearing, nor has he paid the \$2500.00 rent for the month of December 2013 and the \$2500.00 rent for the month of January 2014.

The Residential Tenancy Act allows landlord to end the tenancy for nonpayment of rent, and it does not matter why the rent is outstanding, it only matters if the is rent outstanding, and in this case as stated above there is a substantial amount of rent outstanding.

Therefore, it is my decision that I will not set aside the Notice to End Tenancy and this tenancy ends pursuant to that notice.

I also allow the landlord's claim for the outstanding rent for the months of December 2013 and January 2014.

I further allow recovery of the landlord's filing fee.

#### Conclusion

##### **Tenant's application**

The tenant's request to cancel a 10 day Notice to End Tenancy is dismissed as is the request for recovery of the filing fee.

The remaining issues on the tenant application are dismissed with leave to reapply.

##### **Landlord's application**

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

I have issued a Monetary Order in the amount of \$5050.00.

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: January 22, 2014

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Residential Tenancy Branch