



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RICKFORD APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNDC, O

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and other issues. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order to be permitted to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's advocates and an agent for the landlord attended the conference call hearing, the tenant and landlord's agent gave sworn testimony at the hearing 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 and to the other party in advance of this hearing. Part of the tenant's evidence was not provided to the landlord prior to the hearing. I considered this evidence and found it would not prejudice the landlord if the evidence was accepted in this hearing as it was primarily evidence pertaining to the names of the tenant's advocates. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2014. Rent for this unit is \$680.00 a month due on the 1<sup>st</sup> of each month in advance. The tenant paid a security deposit of \$340.00 on November 03, 2014. The tenant previously lived in a different unit in a neighbouring building of the landlords.

The landlord's agent testified that the tenant's rent cheque for January, 2015 was not honoured at the bank due to insufficient funds. A 10 Day Notice to end Tenancy (the Notice) was served upon the tenant on January 10, 2014 by posting the Notice to the tenant's door. The Notice stated that rent of \$680.00 is unpaid for January and the tenant has five days to pay the rent or file an application to dispute the Notice or the tenancy will end on January 30, 2015.

The landlord's agent testified that the tenant did not pay the rent for January and has since failed to pay rent for February. The landlord's agent orally requested that the landlord's application be amended to include unpaid rent for February. The landlord seeks to have the Notice upheld and requested an Order of Possession effective at the end of February, 2015. The landlord also seeks a Monetary Order to recover the unpaid rent of \$1,360.00.

The landlord seeks an Order to be permitted to apply the security deposit of \$340.00 to the outstanding rent and to recover the filing fee of \$50.00.

The tenant disputed the landlord's claims. The tenant testified that he did not pay rent for January as the landlord has operated in bad faith by not completing a move in condition inspection report with the tenant at the start of the tenancy. A red seal contractor will have to come and do repairs to the tenant's unit. These repairs include mismatched and damaged kitchen cabinets, damaged stove and oven, badly installed baseboards, missing vertical blinds, a missing disability threshold and repainting of the walls with the exception of the bathroom. The tenant testified that the landlord also removed the tenant's privileges in being able to charge his mobility scooter on the property and that the landlord's agent threatened the tenant.

The tenant testified that the repairs required in the unit will be in excess of \$3,500.00 and these are not the tenant's responsibility. The tenant confirmed that he has not made any repairs to the unit with the exception of the threshold. The tenant testified that he should not have to pay rent for the unit for January or February until the repairs are made.

The tenant testified that the landlord made an undertaking to the tenant to correct these deficiencies in the unit but refused to put this in writing to the tenant. Due to this the tenant seeks compensation from the landlord to an amount equal to rent paid for December plus the return of the security deposit to a total amount of \$1,020.00.

The tenant testified that compensation should also include the loss of the tenant's privilege in being able to charge his mobility scooter and because the landlord's agent has threatened to throw the tenant's belongings out into the street.

The landlord's agent disputed the tenant's claims. The landlord's agent testified that he was aware of the threshold issue as a previous tenant living in that unit also had a wheelchair and the threshold was left off to assist that tenant. The landlord did not

replace it as this tenant also had disabilities. The landlord's agent testified that the tenant has not filled in a work order concerning any repairs required in his unit. It did take the tenant 13 days to move from his old unit to this new unit in December, 2014 and the landlord felt he could not do an inspection of the unit 13 days later. It was also difficult to get hold of the tenant to schedule an inspection. The landlord's agent testified that he did an inspection of the unit himself but did not ask the tenant to sign the report as the tenant did not attend the inspection. The landlord's agent testified that the unit had been freshly painted; the stove was clean and in working order and the unit was clean and habitable. The unit also had blinds up when the tenant took possession of the unit. The landlord's agent testified that as the tenant did not attend the move in inspection the landlord understands that the tenant cannot be held responsible for damage to the unit at the end of the tenancy.

The landlord's agent testified that the building does not have the facilities for tenants to plug in mobility scooters. The tenant was using an outdoor power outlet to plug in his scooter and was asked not to do so as the tenant was not paying rent and was using the landlord's power to charge his scooter. The tenant also used the power in his previous building as the tenant was able to gain access using the keys to that building that the tenant did not return when he moved from his old unit.

The tenant asked the landlord's agent if the landlord's agent had chased the tenant out of the walk-up where he had agreed the tenant could plug his scooter in. On January 23, 2015 did the landlord's agent threaten the tenant? The landlord's agent responded that this was when the tenant was taking a spot in his previous building to power his scooter and was told he no longer had this privilege as he did not live in that building. The landlord's agent denies threatening the tenant.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.*

I am satisfied that the tenant failed to pay rent for January and February, 2015 of \$1,360.00. As the tenant continues to have possession of the rental unit it is my decision that the landlord is entitled to amend their application to recover the unpaid rent for February as the tenant should be aware that rent is due on the first day of each month. The landlord is therefore entitled to recover the amount of **\$1,360.00** from the tenant.

I Order the landlord to keep the security deposit of **\$340.00** in partial satisfaction of the landlord's monetary claim pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been successful with their claim the landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for January and February, 2015	1,360.00
Filing fee	\$50.00
Less security deposit	(-\$340.00)
<b>Total amount due to the landlord</b>	<b>\$1,070.00</b>

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. As this Notice was posted on the tenant's door it was deemed served three days after posting on January 13, 2015. The tenant did not pay the outstanding rent within five days and although the tenant has applied to cancel the Notice the tenant has no grounds under the *Act* to permit me to cancel the Notice.

Based on the foregoing, as I have found that the tenant was not entitled to withhold rent, I find that the tenancy ended on the effective date of the Notice. As this date has since passed, I grant the landlord an Order of Possession as requested, effective on February 28, 2015, pursuant to s. 55 of the *Act*.

With regard to the tenant's claim to cancel the Notice; as I have found in favor of the landlord's claim for an Order of Possession, the tenant's application to cancel the Notice is dismissed without leave to reapply.

With regard to the tenant's claim for compensation; the tenant seeks compensation because the tenant claimed the landlord did not make necessary repairs to the unit, the landlord's agent withdrew the tenant's privilege to charge his mobility scooter and because the landlord's agent threatened the tenant. In this matter the tenant has the burden of proof to show that repairs were required in the unit and that the tenant had notified the landlord of these repairs. The tenant has the burden of proof to show that the tenancy agreement allowed the tenant to charge his mobility scooter on the premises and that the landlord's agent threatened the tenant.

I have insufficient evidence before me that the tenant notified the landlord of necessary repairs in his rental unit; insufficient evidence to show that the tenant is entitled to use the landlord's outdoor outlets to charge his mobility scooter; or that the landlord's agent threatened the tenant. Consequently, I find the tenant has not met the burden of proof in this matter and the tenant's claim for compensation is dismissed without leave to reapply.

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,070.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord on February 28, 2015. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety 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: February 10, 2015

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Residential Tenancy Branch

