



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OPR, MNR, MNDC, MNSD

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The Parties agreed that the tenancy started on October 10, 2014 and that the Landlord collected \$100.00 as a security deposit. The Parties agreed that the tenancy started on

a weekly basis with rent of \$250.00 payable each week. The Parties agreed that the tenancy switched to a monthly tenancy on November 1, 2014 with rent of \$750.00 payable monthly.

The Landlord states that when the rental was changed to monthly the rent became payable on the 1<sup>st</sup> day of each month. The Landlord states that as the Tenants failed to pay rent on November 1, 2014 the tenancy reverted to a weekly tenancy again. The Landlord states that all rent for November 2014 was paid. The Landlord states that the Tenants only paid \$65.00 for December 2014, that nothing was paid for January 2015 and that \$350.00 was paid for February 2015. The Landlord states that receipts were always provided to the Tenants for rents paid but that the Landlord has no copies of these receipts. The Parties agreed that the Landlord served the Tenants with a 10 day notice for unpaid rent (the "Notice") on February 27, 2015. It is noted that the amount set out on the Notice as unpaid rent of \$3,085.00 that was due February 27, 2015. The Landlord claims unpaid rent of \$4,235.00.

The Tenant states that when the tenancy reverted to a monthly tenancy they were told that they could pay rent anytime between the 1<sup>st</sup> and 10<sup>th</sup> of each month. The Tenant states that they asked for a written tenancy agreement but the Landlord refused. The Tenant states the journal notes provided by the Landlord are evidence of poor record keeping. The Tenant states that rent was paid in cash and that on some occasions the Landlord would provide a rental receipt and on other occasions despite asking for receipts the Landlord refused to provide rental receipts. The Tenant states that they paid the full rent for December 2014 on or about December 12, 2014. The Tenants states that they paid the full rent for January 2015 during the 1<sup>st</sup> week of January 2015. The Tenant states that they owe \$250.00 for unpaid February 2015 rent, \$400.00 for unpaid March 2015 rent and full rent for April 2015. The Tenant states that they are moving out of the unit on April 25, 2015.

Analysis

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Although there is not written tenancy, it is undisputed that the tenancy became a monthly tenancy as of November 1, 2014 with rent of \$750.00 under oral agreement. Since the Landlord cannot arbitrarily change this agreement without the agreement of the Tenant, and there is no evidence of such agreement, I find that the tenancy as of November 1, 2014 became a monthly tenancy. Accordingly the Landlord became entitled to only a monthly rent of \$750.00 and not a weekly rent of \$250.00 as of November 1, 2014.

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy. This section requires the provision of a valid notice. Overall I find the Landlord's evidence of accounting to be weak. Even if I were to accept the Landlord's version of rents unpaid, I note that the Landlord's evidence of rents owing does not add up to the amount placed on the Notice and that the amount on the Notice is far greater than the amount that would be owed if the Landlord's version of payments were to be accepted. I find therefore that the Tenant has substantiated on a balance of probabilities that the Notice is not valid. The Tenants are therefore entitled to a cancellation of the Notice. As the Notice is not valid, I dismiss the Landlord's claim for an order of possession.

Considering the Tenant's evidence that receipts were not always provided, the Tenant's evidence of rents paid, the Landlord's weak accounting evidence and the Landlord's evidence of not having any copies of rent receipts, I find that the Landlord has only substantiated on a balance of probabilities an entitlement to unpaid rent to the end of April 2015 in the amount of **\$1,400.00**.

As the Landlord has failed to provide a written tenancy agreement as required under the Act and as the Landlord's application has met with limited success, I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. As the tenancy has not yet ended, I dismiss the Landlord's claim for retention of the security deposit with leave to reapply.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,400.00**. If necessary, this order may be filed 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 10, 2015

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Residential Tenancy Branch

