



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR OPR ERP

### **Introduction:**

Both parties made applications and attended the hearing and gave sworn testimony. The landlord said they served the tenant personally with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 3, 2018 to be effective by April 13, 2018 and the tenant confirmed this. The tenant said they served the landlord with their Application for Dispute dated April 4, 2018 by registered mail and the landlord said they served the tenant with their application personally. Both parties confirmed they were served as stated. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to section 46 of *The Residential Tenancy Act* (the Act)

- a) to cancel the Notice to End Tenancy;
- b) to order the landlord to do emergency and other repairs.

The landlord applies pursuant to sections 44 or 46 of the Act:

- a) for an Order of Possession based on a tenant notice to end tenancy or on the 10 Day Notice to End Tenancy for unpaid rent;
- b) for a monetary order for the unpaid rent and filing fee; and
- c) to retain the security deposit to offset the amount owing.

**Issues:** Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed the tenancy began in August 2016, rent is \$800 a month and a security deposit of \$400 was paid. The landlord stated that the tenant failed to pay the rent for April and was served with a Notice to End the Tenancy on April 3, 2018 and that the rent is still outstanding. However the tenant vacated on April 27, 2018 and an Order of Possession is no longer required.

The landlord requests a monetary order for \$800 for unpaid rent for April and to retain the security deposit to offset the amount owing. The tenant confirmed she paid no rent in April.

The tenant had requested emergency repairs in her application. She submitted photographs of what she said were mould in the unit and a flood. At the end of the hearing, she asked about compensation for some of her belongings that she alleges were damaged by the mould or flood. She had submitted no monetary claim in her application. She thought at first that she had but the landlord said there was no monetary claim served on him and when I checked the original application online, I found no monetary claim although she sent in many photographs. The tenant said she required more time to pick up all her belongings. The parties discussed this and the landlord agreed to open the unit on Saturday, May 26 from 1 p.m. to 2 p.m. to allow the tenant to retrieve the remainder of her belongings.

The landlord said the tenant had damaged the suite and he may claim for damages later. The parties disputed in the conference about the possible causes of the flood.

**Analysis:**

As the tenant has vacated, I find the landlord no longer requires an Order of Possession.

I find the evidence is that the tenant owes \$800 in unpaid rent for April 2018. I find the landlord entitled to a monetary order for unpaid rent and to retain the security deposit to offset the amount owing.

In respect to the tenant's submission regarding mould, I find section 26 of the Act requires a tenant to pay rent on time, whether or not the landlord is fulfilling his obligations under the Act. As she has vacated, I dismiss her claim for emergency repairs.

Regarding her claim in the hearing for compensation, I find the principles of Natural Justice require a party to be informed of a claim against them and have the opportunity to respond. I find the tenant did not inform the landlord of a claim for compensation and did not file such a claim with the Residential Tenancy Branch. Some photographs of an alleged flood and mould are not a claim for compensation. I dismiss the claim of the tenant.

**Conclusion:**

I dismiss the tenant's application; her filing fee was waived. I find the landlord entitled to a monetary order as calculated below:

Unpaid rent	800.00
Filing fee	100.00
Less security deposit	-400.00
<b>Total Monetary Order to Landlord</b>	<b>500.00</b>

**I HEREBY ORDER THAT the landlord open the subject unit on Saturday, May 26 between 1 p.m. and 2 p.m. to allow the tenant to retrieve the remainder of her belongings.**

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 23, 2018

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Residential Tenancy Branch