

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

### **Dispute Codes:**

*OPR, OPC, MND, MNR, MT, CNR, FF*

### **Introduction,**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, cost of repairs and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for additional time to make application to do so.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent, repairs and the filing fee? Did exceptional circumstances prevent the tenant from making an application to dispute the notice to end tenancy, within the five day time limit?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on January 15, 2009. The rent was set at \$750.00 per month due on the first of each month.

The tenant failed to pay rent for August and on August 05, 2009; the landlord served the tenant in person, with a ten day notice to end tenancy. The tenant applied to dispute the notice on August 14, 2009. The tenant stated that he didn't realize that five days had gone by and on August 13, he arrived at the office after it had closed. Therefore the tenant applied for dispute resolution nine days after receiving the notice.

The tenant has since paid some rent and now owes the landlord \$400.00 for August and \$480.00 for September. The landlord has also applied for the costs to fix a heat detector in the amount of \$247.65 and had filed evidence to support her claim. The detector, located inside the tenant's suite was tampered with, thereby jeopardizing the safety of the occupants of the building, in the event of a fire.

The landlord has also applied for costs of fixing the broken door, cleaning the carpet and for other damage to the suite. Since the tenant has not moved out and stated that he would take care of the damage, I am dismissing this portion of the landlord's claim with leave to re-apply.

The landlord has applied for an order of possession effective two days after service on the tenant and a monetary order for unpaid rent (\$880.00), repairs (\$247.65) plus the filing fee (\$50.00).

### **Analysis**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution.

If the tenant does not pay rent or dispute the notice within five days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy on August 05, 2009 and did not pay overdue rent or dispute the notice within five days of receiving the notice. Section 66 of the *Residential Tenancy Act*, states that the time limit to dispute the notice may be extended only in exceptional circumstances. I find that the tenant did not have exceptional circumstances that prevented him from applying within the five day time limit and accordingly, his application for more time is dismissed.

Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$1127.65 for unpaid rent and repairs to the heat detector. Since the landlord has proven her case, she is also entitled to \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,177.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$1,177.65**

Dated September 30, 2009.

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Dispute Resolution Officer