



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was scheduled to hear a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenant appeared at the hearing a few minutes after it commenced, citing difficulties connecting to the teleconference call; however, I had not begun to hear testimony prior to the tenant's appearance. The tenant was joined by her daughter in law shortly after that. I permitted the tenant's daughter in law to remain in the hearing as emotional support for the tenant. I proceeded to explain standards for acceptable conduct during the hearing to both parties and to confirm service of documents and evidence.

The tenant raised an issue with service of the landlord's evidence. The tenant stated that other than the landlord's Application for Dispute Resolution, Notice of Hearing, and Fact Sheets, the landlord did not serve the tenant with evidence. The landlord acknowledged that the tenant was not provided another copy of the tenancy agreement or 10 Day Notice other than when they were originally provided to her. I verified the details of tenancy and content of the 10 Day Notice with the tenant to ensure she had received the same documents I was provided. I was satisfied the documents provided by the landlord were the same as those in the tenant's possession and I accepted those documents into evidence.

The landlord confirmed receipt of the two packages submitted by the tenant. Although the tenant's second package was submitted to the landlord and the Branch after service deadlines had passed the landlord did not raise any concerns about the timing of the delivery and I accepted both of the tenant's packages into evidence.

During the hearing the tenant became very emotionally distraught on a number of occasions. On one occasion I called a brief recess in an effort to permit the tenant time to gather her thoughts. Although this application involved an undisputed Notice to End Tenancy I heard over an hour of testimony, mostly from the tenant.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order?

### Background and Evidence

The following information was undisputed by the parties:

- The tenancy commenced October 1, 2009;
- The tenant paid a \$525.00 security deposit;
- The tenant is required to pay rent of \$1,050.00 on the 1<sup>st</sup> day of every month;
- The tenant did not pay rent when due on June 1, 2012;
- The landlords left a document on the tenant's door on June 17, 2012 requesting she sign the document and return it to them;
- The tenant did not sign the document before the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on June 20, 2012;
- The landlord posted the 10 Day Notice and the tenant received the 10 Day Notice on June 20, 2012;
- The Notice indicated that \$1,050.00 was outstanding as of June 1, 2012 and had an effective date of June 30, 2012;
- The tenant did file to dispute the 10 Day Notice;
- The tenant paid the outstanding rent June 30, 2012 and the landlord communicated to the tenant on June 30, 2012 that the money was accepted for use and occupancy only and that she was still expected to vacate the rental unit.
- On June 30, 2012 the tenant gave the landlord a notice to end tenancy effective July 31, 2012 and a cheque for July's rent;
- The landlord cashed the tenant's cheque on July 9, 2012 and communicated to the tenant that the money was being accepted for use and occupancy only.

The landlord is seeking an Order of Possession and withdrew the request for a Monetary Order as rent is no longer outstanding.

The tenant was of the position the 10 Day Notice should not have been issued to her. The tenant submitted that in May 2012 she advised the male landlord that she was

having financial difficulties and did not have the rent for June 2012. The landlord told her “not to worry about it”. The tenant testified that she took the landlord’s response to mean she could pay the rent later. The tenant was of the understanding that she would have a few weeks to pay the rent for June 2012.

The tenant also submitted that there was also a discussion about using the security deposit for the first half of June’s rent and she understood that this would be accomplished by way of a written agreement. Upon receiving the document on June 17, 2012 the agreement appeared more extraneous than what she had agreed to or anticipated. The tenant explained that while she was considering all of the ramifications of signing the agreement three days elapsed and the landlord served her with a 10 Day Notice. The tenant acknowledged that after receiving the 10 Day Notice she cut off all communication with the landlords and did not make any attempt to communicate with the landlords.

The tenant also acknowledged that she did not file to dispute the Notice claiming she could not do so because she had to remain at the rental unit one day, to deal with an issue with the locks, and could not travel the following day due to exhaustion.

The tenant also cited confusion as the reason she did not communicate with the landlords or dispute the Notice.

I informed the parties that since the landlord accepted monies for use and occupancy for the month of July 2012 an Order of Possession would have an effective date of July 31, 2012. I noted that this coincided with the tenant’s notice to end tenancy. However, the tenant responded by stating she no longer wanted to move out July 31, 2012.

### Analysis

The tenant claimed she had the landlord’s consent to pay rent late by a few weeks. If I accept this submission, the tenant was given 20 days before a Notice to End Tenancy was issued, meaning the tenant could have paid her rent up until June 25, 2012 in order to nullify the Notice and continue with the tenancy. Therefore, I find the landlords did give the tenant the benefit of paying rent more than a few weeks late and did not breach an agreement with the tenant.

Although the tenant claimed she had the landlord’s verbal consent to use the security deposit towards rent, such consent must be given in writing. This was not done. Rather, the landlord proposed an agreement with the tenant by way of the June 17, 2012 document.

Upon review of the document left for the tenant on June 17, 2012 I accept that the landlords were agreeable to wait until July 1, 2012 before issuing a 10 Day Notice provided the tenant was in agreement with their terms of payment, among other issues. In the absence of the tenant's signature or communication from the tenant within three days, I find the landlords acted reasonably by presuming the tenant did not agree with the terms and proceeding to issue a 10 Day Notice.

In light of the above, I find no basis to conclude the landlords were otherwise precluded from issuing a 10 Day Notice to the tenant.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The tenant gave two excuses for not filing to dispute the Notice on two consecutive dates. However, the Act provides that a tenant has five days to dispute a Notice and in exceptional circumstances a tenant can receive an extension of time to apply to dispute a Notice. Ultimately, the tenant never applied to dispute the Notice. Therefore, I must consider the Notice undisputed.

Although the tenant may have been confused, the Notice and the Residential Tenancy Branch provide information for tenants that receive 10 Day Notices. Upon hearing from the tenant it would appear the tenant did not take advantage of the resources available to her with respect to this issue. Nevertheless, the tenant's confusion does not form a basis under the Act to deny the landlord's request to regain possession of the rental unit.

Considering the landlord has accepted monies for use and occupancy for the month of July 2012 I provide the landlord with an Order of Possession effective at 1:00 p.m. on July 31, 2012.

As there is no outstanding rent as of the date of this hearing I do not provide a Monetary Order to the landlord. However, I do award the filing fee to the landlord. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended and, in accordance with the acceptance of funds for use and occupancy only, the landlord has been provided an Order of Possession effective July 31, 2012 at 1:00 p.m. to serve upon the tenant and enforce as necessary.

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: July 18, 2012.

---

Residential Tenancy Branch