



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MT, CNR

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant requests more time to cancel the Notice to End Tenancy and seeks to cancel the 10 Day Notice for unpaid rent. The landlord seeks an Order of Possession; a Monetary Order to recover unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

I am satisfied that the tenant was served in accordance with section 89 of the *Act*. The tenant was served by registered mail on June 22, 2012 and the landlord has provided documentary evidence to show the tenant collected this mail on June 26, 2012. The tenant did not appear at the hearing. The hearing went ahead as scheduled the landlord dialed into the conference call but after 10 minutes the tenant had not dialed into the call. Based on this I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

The landlords property manager appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find the landlord has applied for a Monetary Order for money owed or compensation for damage or loss. As this section of the landlords claim is unrelated to the main issues I find it is appropriate to dismiss this section of the landlords claim with leave to reapply.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

#### Background and Evidence

The property manager for the landlord (agent) testifies that this tenancy started on December 01, 2011. Rent for this unit is \$680.00.00 per month plus \$15.00 for laundry. Rent is due on the first of each month. The tenant paid a security deposit of \$340 on October 31, 2011.

The agent testifies that the tenant failed to pay rent for June, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 06, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$715.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 15, 2012. The agent testifies that the tenant did not pay the outstanding rent or laundry fees for June. Since that time the tenant has failed to pay rent for July, 2012

and a second 10 Day Notice has been issued to the tenant on July 02, 2012. The total amount of outstanding rent is now \$1,360.00 plus \$15.00 for laundry fees for June.

The landlord has applied to retain the tenants' security deposit of \$340.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover the \$50.00 filing fee from the tenant.

### Analysis

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 find the tenant failed to pay rent for June or July, 2012. I find that the tenant also failed to pay laundry fees for June, 2012 and the landlord is therefore entitled to recover the sum of \$15.00. Consequently, the landlord is entitled to a Monetary Order to recover these arrears to the total sum of **\$1,375.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$340.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and laundry fees	\$1,375.00
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Less Security Deposit	(-\$340.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$1,085.00</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. The tenant did not pay the outstanding rent within five days and although the tenant did apply to cancel the Notice this was not done within five days and the tenant failed to appear at the hearing.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,085.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord claim for Money owed or compensation for damage or loss is dismissed with leave to reapply.

The tenants application is dismissed 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: July 12, 2012.

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Residential Tenancy Branch