



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated June 2, 2012 and a monetary order for rent owed and future loss of rent.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to damages for loss of revenue for August?

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated June 2, 2012 with effective date of June 12, 2012, a copy of the resident ledger and a copy of the tenancy agreement. The landlord testified that the tenancy began on March 1, 2007, at which time the tenant paid a security deposit of \$380.00. The landlord testified that the tenant fell into arrears with rent, accruing a debt of \$2,204.00 in rent and late fees up to the end of July 2012. The landlord was also claiming a loss of rent for August in the amount of \$1,082.00 and a \$20.00 late fee.

The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

### **Analysis**

In regard to the \$2,204.00 in rental arrears being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy

agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the arrears and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

With respect to the landlord's claim for future loss of rent and late fees for August 2012 in the amount of \$1,102.00 I find that this would be a claim in damages.

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord's claim for loss of rent for the month of August does not satisfy elements 2, 3 or 4 of the test for damages as no loss had occurred at the time the landlord filed the application. Accordingly, I find that the claim of \$1,102.00 for loss of rent for August 2012 must be dismissed.

I find that the landlord has established a total monetary claim for rent of \$2,254.00, comprised of \$2,204.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$391.00 in partial satisfaction of the claim leaving a balance due of \$1,863.00.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$1,863.00. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's claim is dismissed without leave.

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 11, 2012.

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Residential Tenancy Branch