



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MNR, OPR, 1 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 4, 2012 and a monetary order for rent and utilities owed.

Both parties appeared and gave testimony during the conference call.

### Issue(s) to be Decided

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

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

### Background and Evidence

The landlord testified that the tenancy started on March 1, 2012 with rent set at \$875.00 per month and no security deposit was paid. No written tenancy agreement was in evidence.

The landlord testified that the tenant failed to pay all of the rent for the month of May 2012 and owed \$75.00 in arrears for that month. The landlord testified that the tenant also failed to pay \$875.00 for the month of June 2012. The landlord testified that the tenant also failed to put the utilities in the tenant's name and the landlord was billed \$329.20 for the utilities. The landlord is seeking reimbursement. No utility bill was in evidence.

The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued on June 4, 2011 and served on the tenant by posting it on the door. The landlord testified that, several days after the five-day deadline had passed, the tenant came to the landlord claiming to have some of the funds in the bank and asked to arrange partial payments. The landlord stated that the landlord was not willing to accept

the proposed payment plan. The landlord testified that, in addition, the tenant has not yet paid the \$875.00 rent owed for July and also did not vacate the unit. The landlord is now seeking \$2,554.20 for rent and utilities and an order of possession.

The tenant testified that they were out of the country and were delayed because of a serious car accident. The tenant testified that they did not get the Ten Day Notice to End Tenancy for Unpaid Rent until June 14, 2012 and immediately tried to pay the landlord all of the arrears in full. The tenant testified that the landlord flatly refused the payment. The tenant did not dispute that they failed to put the utility account in the tenant's name, but stated that they duly notified the utility company and made the request to have the account transferred. However, the account was never transferred to them. The tenant also did not dispute that the rent for July 2012 was left unpaid, but stated that this was due to the landlord's refusal to accept the funds.

The tenant pointed out that there were issues with ants and other problems with the rental unit that the landlord neglected to deal with.

### **Analysis**

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 the 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. The reason that the rent was not paid is irrelevant to this dispute.

When a tenant fails to comply with section 26, then 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 pay the overdue rent**, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I find that the tenant did neither.

I accept the tenant's testimony that an attempt was made to pay some or all of the outstanding arrears and that their payment proposal was rejected by the landlord. However, I find that this offer of payment did not occur within the required 5 days after the Notice was served.

I find that the Ten-day Notice includes written instructions on page 2 informing the tenant about how and when they may dispute the notice if the claim is not being accepted. In this instance I find that the tenant was in arrears at the time the Notice was posted on June 4, 2012, deemed under section 90 of the Act as served by June 7,

2012. I find that the tenant did not satisfy all the arrears within 5 days, nor did the tenant file to dispute the Notice.

Section 46(5) of the Act provides that, if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then 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 to which the notice relates by that date.

Given the above, I find that the landlord is entitled to an Order of Possession.

With respect to the rent owed, I find that the landlord is entitled to be compensated for outstanding rent owed for May, June and July 2012 in the amount of \$1,825.00.

In regard to the utilities owed, I find that the terms relating to utility payments would have been detailed in the tenancy agreement which was not in evidence. However, based on the testimony of both parties, I accept that there was a term in the verbal tenancy agreement requiring the tenant to put the hydro in their name and to take responsibility for the payments.

With respect to the landlord's claim for reimbursement of \$329.20 in utilities, I find that an Applicant's right to claim damages from another party, is addressed in section 7 of the Act. This section 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 it clear that the tenant did violate a term in the agreement. However, I find that the claim for utilities failed to satisfy element 3 of the test for damages, because the landlord did not submit sufficient evidentiary proof to verify the amount being billed. Accordingly, I find that the portion of the application relating to compensation for the \$329.20 owed for hydro must be dismissed.

Based on the evidence before me, I find that the landlord has established a total monetary claim of \$1,875.00 comprised of \$1,825.00 in accrued rental arrears and the \$50.00 fee paid by the landlord for this application.

### **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 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 \$1,875.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 10, 2012.

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Residential Tenancy Branch