



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

#### **OPR, MNR, Introduction**

This application was originally brought by the landlord seeking an Order of Possession and a monetary order based on a 10-day Notice to End Tenancy for Unpaid Rent dated June 4, 2012. The matter was dealt with through the Direct Request process, which is an ex-parte hearing based on written submissions from the landlord. In the original decision, the landlord was granted a monetary order for \$1,236.00 and an order of possession effective 2 days after service, based on the documentary evidence provided by the landlord.

The tenant made a successful application for Review Consideration on the ground of fraud and a re-hearing was scheduled for today with additional evidence submitted prior to the hearing. Both parties appeared and gave testimony.

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

The issues to be determined 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 dated June 4, 2012.
- Whether or not the landlord is entitled to a monetary order for rental arrears.

### **Background and Evidence**

The tenancy began in September 1999 and the current rent is \$1,236.00. A deposit of \$500.00 was paid.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated June 4, 2012 with effective date of June 14, 2012, a copy of the tenant ledger, copies of other notices served on the tenant, copies of receipts and communications and a copy of the tenancy agreement.

At the outset of this hearing the landlord advised that the Ten Day Notice to End Tenancy for Unpaid Rent had been posted on the tenant's door on June 4, 2012. Section 90 of the Act provides that a posted Notice is deemed to be served in 3 days, which would make service effective June 7, 2012.

The landlord testified that the tenant paid all of the outstanding rental arrears owed for June and, according to the landlord's documents, this occurred on June 13, 2012 at which time the tenant was issued a receipt for "*use and occupancy only*".

The landlord acknowledged that the tenant's rent was no longer in arrears, but pointed out that the tenant did not pay the arrears within the required 5-day deadline required to cancel the Notice.

The landlord testified that the tenant's payment was not acknowledged in the landlord's original application for direct Request Proceeding filed on June 12, 2012, but that this was due to the fact that the application was made prior to the landlord receiving the tenant's payment on June 13, 2012. No rental arrears are now owed. However, the landlord is still seeking an Order of Possession.

The tenant testified that the payment of rental arrears was made as soon as possible. The tenant conceded that the payment was made after the five-day deadline because she was involved in medical treatment. The tenant pointed out that the rent owed for July has also been paid in full and all documents requested by the landlord to support the tenancy have been submitted. The tenant is hopeful that the tenancy will continue.

### **Analysis**

Section 26 (1) of the Act states that 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. In this instance, the tenant had fallen into arrears by failing to pay the rent when it was due on June 1, 2012.

Section 46 of the Act states that a landlord may issue a Notice to End a tenancy whenever rent is unpaid after the day it is due, effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, the Act 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.

If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution 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.

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent posted on June 4, 2012 and deemed under the Act to have been received as of June 7, 2012.

I find that, to cancel the Notice, the tenant would have had to pay the arrears on or before June 12, 2012. In this instance, the tenant paid the arrears on June 13, 2012 and was issued a receipt by the landlord for "Use and Occupancy Only". I find that the payment was made too late to cancel the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

However, as the tenant paid the rent in full for the month of June 2012 and the rent for July 2012, I find that all arrears have been satisfied and no monetary order for the landlord is warranted.

### **Conclusion**

I hereby cancel the previously issued Order of Possession and the monetary order dated June 18, 2012.

I hereby issue an Order of Possession in favour of the landlord effective July 31, 2012. This order must be served on the Respondent and may be filed in the Supreme Court 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 18, 2012.

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Residential Tenancy Branch