



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, provided evidentiary material prior to the commencement of the hearing, and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 25, 2012, the tenant did not attend. The landlord provided oral testimony and evidentiary material to substantiate that the tenant was served on that day and in that manner, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open for 10 minutes without hearing any testimony to provide the tenant with additional time to call into the conference call hearing. The phone was monitored for that 10 minute period, and the tenant did not dial into the conference call.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2007 and the tenant still resides in the rental unit, although the tenant does not stay there full time. Rent in the amount of \$875.00 per month was originally payable on the 1<sup>st</sup> day of each month which was increased to \$895.00 per month effective September 1, 2011. On October 27, 2007 the landlord collected a security deposit from the tenant in the amount of \$437.50 which is still held in trust by the landlord.

The landlord further testified that the tenant has been continually late paying the rent. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 7, 2012 and provided a copy for this hearing. The notice is dated August 7, 2012 and states that the tenant failed to pay rent in the amount of \$895.00 that was due on August 1, 2012. The effective date of vacancy is August 17, 2012. Both pages of the 2-page form have been provided, and the landlord testified that the notice was posted to the door of the rental unit on August 7, 2012.

The tenant further failed to pay rent when it was due in September, 2012 and the landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but did not provide a copy for this hearing.

The landlord testified that the tenant paid the rent for August on August 28, 2012 and the landlord issued a receipt that clearly stated that the payment was being received "For Use and Occupancy Only." The tenant paid the landlord rent for the month of September, 2012 on September 7, 2012 and again the landlord gave the tenant a receipt that had been marked, "For Use and Occupancy Only."

The landlord claims an Order of Possession and a monetary order for rent for the month of October, 2012 stating that the landlord will suffer a loss of revenue, as well as recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may issue a notice to end tenancy on any date after the date rent is payable. The tenant then has 5 days to dispute the notice or pay the rent in full. If the tenant fails to do either, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be 10 days after service. In this case, the landlord testified that the notice was served on August 7, 2012 by posting it to the door of the rental unit. Section 90 of the *Act* states that documents served in that manner are deemed to be served 3 days after posting, which I find to be August 10,

2012. I am satisfied that the tenant failed to pay the rent within 5 days and did not dispute the notice within 5 days. The *Act* also states that incorrect effective dates on a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*, which I find to be August 20, 2012.

I therefore find that the landlord has established a claim for an Order of Possession for unpaid rent.

With respect to the monetary order, I find that the landlord is not owed any past rent, having received the payments from the tenant and I accept that the landlord has not reinstated the tenancy because the landlord issued receipts that had clearly marked, "For Use and Occupancy Only." The landlord clearly will not be able to advertise the rental unit for rent prior to October 1, 2012, and the landlord is required to mitigate any loss of rent for subsequent months, and therefore, I find that the landlord is entitled to recover from the tenant one half of a month's rent as loss of revenue.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Having found that the landlord is entitled to a monetary order for one half a month's rent, or \$447.50, the landlord is entitled to keep the security deposit and interest in the amount of \$7.77 in partial satisfaction of the claim. I hereby order the landlord to keep the security deposit and the tenant is liable for the difference in the amount of \$52.23, being:

$\$447.50 \text{ rent for October} + 50.00 \text{ filing fee} - 437.50 \text{ security deposit} - 7.77 \text{ interest on the security deposit} = \$52.23.$

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit and interest totalling \$445.27 in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$52.23.

This order is final and binding on the parties and may be enforced.

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: September 26, 2012.

---

Residential Tenancy Branch