



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, MND, 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, December 4, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord testified that there was a typographical error and the date on the Notice should read, "*January*" 4, 2013, instead of "*December*" 4, 2013.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 18, 2013, and confirmed by the Canada Post tracking number, the tenant did not appear.

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

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?

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy with effective date of January 17, 2013, proof of service, a copy of the tenancy agreement and copies of communications. The landlord testified that the tenancy began approximately 2 years ago, at which time the tenant paid a security deposit of \$525.00.

The landlord testified that the tenant failed to pay \$540.00 of the rent for December 2012 and then failed to pay rent of \$1,140.00 for January 2013 and a 10-Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that the tenant also failed to pay late fees of \$25.00 pursuant to a term in the tenancy agreement. The landlord testified that the tenant is still living in the unit and failed to pay \$1,140.00 rent for February 2013. The total amount being claimed is \$2,895.00, including the \$50.00 filing fee.

The landlord has requested an Order of Possession.

### **Analysis**

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.

I find that the rent payable, as shown in the original tenancy agreement is \$1,050.00 per month and nothing is shown in the space for parking fees. In explaining the monthly rental rate now being claimed in the amount of \$1,140.00, the landlord stated that the current rent is \$1,095.00, plus \$45.00 charged for parking.

In regard to the landlord's claim for late fees, I find that section 7(1)(d) of the Residential Tenancy Regulation allows a landlord to charge a fee of not more than \$25 for the late payment of rent and section 7(2) of the Act states a landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

I find that the partial tenancy agreement submitted into evidence did not include the key information about the late fee that was to be levied against a tenant when the rent was not paid on time. For this reason I must dismiss the landlord's claim for the \$25.00 late fee.

I find that the landlord has established a total monetary claim of \$2,870.00 comprised of \$2,820.00 in accrued rental arrears and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$525.00 in partial satisfaction of the claim leaving a balance due of \$2,345.00.

I hereby grant the Landlord an order under section 67 for \$2,345.00. 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.

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.

**Conclusion**

The landlord's application is successful and the landlord is granted a monetary order for rental arrears and an Order of Possession.

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: February 13, 2013

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Residential Tenancy Branch