



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, O

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy; and
2. To recover the cost of filing the application.

### Tenant's application

This matter was set for hearing by telephone conference call at 2:00 P.M. on this date. The line remained open while the phone system was monitored for thirty minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 2:30 P.M., and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

### Preliminary Issue – landlord's application

Although served with the Application for Dispute Resolution and Notice of Hearing in person on April 3, 2013, which was witnessed by two witnesses, the tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

At the onset of the hearing, the landlord requested to amend their application to include rent owed for December 2012 and January 2013. In this case, the detail of

dispute in the landlord's application does not provided any particulars that rent was owed for December 2012 and January 2013. I find it would be unfair to amend the landlord's application, when the tenant is not present for that amendment. The landlord is at liberty to apply for rent owed that was not dealt with at this hearing.

The landlord seeks compensation for damages, as a result of the tenant performing work on her property and it is alleged that the work was not complete properly. The landlord also claims the tenant caused damage to her property for work not unauthorized to complete.

In this case, the parties entered into agreement for work, and that work agreement is in dispute. As I find the matter of work performed is separate and does not fall within the jurisdiction of the Residential Tenancy Act, I decline to hear the matter for lack of jurisdiction. The landlord is at liberty to apply to the Provincial Court.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or part of the security deposit paid?

#### Background and Evidence

Based on the testimony of the landlord, I find that the tenant was served with a notice to end tenancy for non-payment of rent on March 13, 2013, by personal service. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant applied to dispute the notice on March 18, 2013. The tenant did not appear at the hearing, and their application was dismissed.

The landlord testified that tenant has not paid any rent since December 1, 2012. The landlord stated there was an exchange for work prior to December; however, the tenant was told he was no longer allowed to perform any work on the property and was required to pay rent as specified in the tenancy agreement.

#### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

As the tenant's application is dismissed and the landlord requested an order of possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director **dismisses the tenant's application** or upholds the landlord's notice.

As I have dismissed the tenant's application. I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

In this case, the landlord testified the tenant has not paid rent since December 2012. The landlord's application did not provide particulars regarding rent for December 2012 and January 2013. As I have previously found it would be unfair to amend the application, when the tenant is not present to include rent for December 2012 and January 2013. However, I am satisfied that the particulars included unpaid rent for March 2013 and April 2013.

I find that the landlord has established a total monetary claim of \$1,250.00 comprised of unpaid rent for March, April 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$275.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$925.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent. The tenant did not appear and their application to cancel the notice to end tenancy was dismissed. The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: April 12, 2013

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Residential Tenancy Branch