



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant at the most recent mailing address the tenant had provided to him by registered mail on February 15, 2013. The landlord also testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on April 2, 2013. The landlord also provided copies of the Canada Post Tracking Numbers and Customer Receipts for both of the above registered mailings. I am satisfied that the landlord served the tenant with the above documents and his written evidence package in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on March 1, 2006. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent was set at \$1,300.00 payable in advance by the first of each month. The landlord continues to hold the tenant's \$625.00 security deposit paid on February 21, 2006.

The landlord entered into written evidence copies of a series of emails he has sent to the tenant to seek a clarification of the tenant's intentions to yield vacant possession of the rental property to the landlord. Although the tenant sent the landlord an October 10, 2012 notification of his intent to end this tenancy sometime in November 2012, the landlord could not obtain a firm date from the tenant as to when he intended to end this tenancy. The landlord testified that he received emails from the tenant confirming that it was taking him time to vacate the premises in November 2012.

The landlord entered written evidence copies of his January 25, 2013 email to the tenant in which he requested that the tenant remove his possessions from the rental property. He also advised that "I will be proceeding as if the house has been abandoned by you" and "any and all items on the property as of Friday, February 1, 2013 will be disposed of." The landlord also entered into written evidence a copy of the tenant's January 31, 2013 email response to the landlord's January 25, 2013 email. In his email, the tenant apologized for the delays in removing his belongings from the property. He said that he would concentrate on removing items from the house first and let the landlord know the following day of the progress he had made. The landlord testified that he subsequently received a full rent cheque from the tenant for December 2012, but heard nothing further from the tenant and had received no further rent payments towards this tenancy.

The landlord issued the 10 Day Notice for \$2,600.00 in unpaid rent owing as of February 15, 2013. The landlord applied for a monetary award of \$5,000.00 for unpaid rent owing from January 2013 until April 2013. The landlord also provided photographs of the rental property, which revealed that the tenant has not removed his possessions from the rental property.

### Analysis

Based on the landlord's written, photographic and sworn oral testimony, I find that the tenant has abandoned the rental unit and there is no need to obtain an Order of Possession pursuant to the landlord's 10 Day Notice. Rather than issuing an Order of Possession, I find that the tenant abandoned the rental unit by February 15, 2013, and that the landlord can take possession of the rental unit immediately. Based on the photographic evidence and the emails entered into written evidence by the landlord, it

would appear that anything that remains on the premises can be treated by the landlord as abandoned garbage and disposed of accordingly. The landlord is referred to Part 5 of the *Residential Tenancy Regulation* issued pursuant to the *Act* for direction on how to deal with abandoned personal property of value that may remain on the premises arising out of this tenancy.

At some point, likely in November 2012, the tenant was no longer living in the rental unit. The tenant's email of January 31, 2013, reveals that as of that date the tenant still had belongings inside the rental unit that he planned to retain and remove before he yielded possession to the landlord. I allow the landlord a monetary award of \$1,300.00 for unpaid rent for January 2013.

I find that the landlord's claim for unpaid rent from February 2013 until April 2013 is affected by the January 25, 2013 notice the landlord gave to the tenant that he would be considering the premises abandoned by February 1, 2013. Since the tenant responded to the landlord's January 25, 2013, and indicated that he was planning to remove additional materials, presumably of value, within the next few days, it seems clear that the tenant had not yet agreed as of January 31, 2013 that everything remaining on the premises could be disposed of by the landlord. For this reason, I also allow the landlord a monetary award of \$1,300.00 for February 2013. I so as I find it unlikely that the landlord could have rented the premises out to someone else for that month, given the tenant's stated intent to retain access to the premises to remove items.

While I understand the landlord's intent to comply with the *Act* by issuing a 10 Day Notice on February 15, 2013, I find that such action was unnecessary, given the circumstances and the exchanges of emails between the parties referred to above. I find that the landlord had grounds to conclude that the tenant had abandoned the premises by February 15, 2013. For that reason, I dismiss the landlord's application for a monetary award for unpaid rent for March and April 2013 without leave to reapply.

I allow the landlord to retain the tenant's security deposit plus applicable interest as partial compensation for the monetary award issued in this decision. As the landlord has been partially successful in this application, I allow the landlord to recover his filing fee from the tenant.

### Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice, as I find that the tenant had already abandoned the rental unit by the time the landlord issued the 10 Day Notice. I find that the landlord is entitled to take immediate possession of the rental unit on the basis of the tenant's abandonment of the rental unit

by February 15, 2013. The landlord is subject to the provisions of Part 5 of the *Regulation* for any personal property of the tenant's of value that remains on the rental property.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord unpaid rent and recovery of the filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid January 2013 Rent	\$1,300.00
Unpaid February 2013 Rent	1,300.00
Less Security Deposit (\$625.00 + \$21.67 = \$646.67)	-646.67
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,003.33</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 29, 2013

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Residential Tenancy Branch