



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPC, FF, OPR, MNR, MNSD, MNDC

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated April 10, 2013 and purporting to be effective May 31, 2013.

Despite being served by registered mail sent on April 25, 2013, the tenant did not appear. The landlord verified the service by providing a copy of the Canada Post receipt with the tracking number.

The landlord amended the application on May 14, 2013 to add a monetary claim based on a Ten Day Notice to End Tenancy for Unpaid Rent, issued on May 3, 2013 and served in person to the tenant on the same date. A copy of the Notice was in Evidence. The landlord testified that he served the tenant with the amendment in person on May 14, 2013. A copy of the amended application was also in evidence.

The amended application also included a claim for damage to the suite in the amount of \$4,014.28.

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

Is the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause?

Is the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord is entitled to a Monetary Order for rental arrears based on the 10-Day Notice?

Is the landlord entitled to a monetary order for damages caused to the suite?

### **Background and Evidence Notice to End Tenancy**

The landlord testified that the tenancy had originally started in April 2013 with rent of \$950.00 and the tenant paid a security deposit of \$475.00.

The landlord testified that the tenant was issued a One-Month Notice to End Tenancy for Cause on April 10, 2013 and served it on the tenant in person on April 10, 2013. The landlord testified that the tenant has not filed an application for Dispute Resolution to dispute the One Month Notice.

The landlord testified that the tenant failed to pay \$950.00 rent due on May 1, 2013 and on May 3, 2013, the Ten Day Notice to End Tenancy for Unpaid Rent was issued terminating the tenancy effective May 13, 2013. The landlord testified that the tenant has not paid the arrears. The landlord stated that the tenant did not dispute the Notice, but has not vacated the unit.

The landlord also testified that, although the tenant is still living in the rental unit, it is clear that the tenant has damaged the premises and the landlord seeks compensation for repairs in the amount of \$4,014.28.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. 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 landlord has established a total monetary claim of \$1,000.00 comprised of \$950.00 accrued rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit of \$475.00 in partial satisfaction of the claim leaving a balance due of \$525.00.

In regard to the landlord's monetary claim for damages to the unit caused by the tenant, I find that section 37(2) of the Act requires the tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord's claim for compensation is premature. Under section 35 of the Act, the condition of the rental unit at the end of the tenancy must be inspected by the landlord and tenant together, after which the state of the rental unit will be documented on the move out condition inspection report.

Accordingly I find that the landlord's monetary claim for damages must be dismissed, and I do so with leave to reapply.

I grant the Landlord an order under section 67 for \$525.00. 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 is partly successful in the application and is granted an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent, plus a monetary order for rental arrears and the cost of the application. The portion of the application seeking monetary compensation for damages is dismissed with leave to reapply.

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: May 23, 2013

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Residential Tenancy Branch

