



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, MNDC, OPR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated April 24, 2013, a monetary order for rent owed, bank fees and utilities.

The landlord was present at the hearing. The tenant was represented by an individual who stated that he is an occupant in the residence, and who was named as a co-tenant/respondent. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **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, bank charges and utility costs?

### **Preliminary Matter: Parties Named as Tenants**

The landlord's application had included the name of an individual Identified as being a co-tenant. However, this individual was not shown on the tenancy agreement and he did not sign the original tenancy agreement. Only one tenant's name is documented on the tenancy agreement as the tenant.

Therefore the style of cause in the application completed by the landlord for this dispute resolution has wrongly included a second respondent named as co-tenant on the

application. I find that the second respondent is not a tenant, but is actually only an occupant, who has no liability, nor standing, with respect to this tenancy or dispute hearing, except for attending the hearing on behalf of the respondent tenant, who apparently could not appear.

Given the above, the hearing will only proceed to deal with the dispute between the tenant who signed the tenancy agreement and the landlord.

The landlord's application was therefore amended to remove the other person who had been wrongly named as a co-tenant and respondent in this dispute.

### **Background and Evidence**

The tenancy began on November 1, 2012 with rent set at \$2,000.00 and a security deposit of \$1,000.00 was paid.

The landlord testified that, the tenant had accrued \$4,000.00 in rental arrears and a Notice to End Tenancy was issued on April 24, 2013 and served on the tenant in person on April 24, 2013. The landlord submitted into evidence a copy of the 10-Day Notice.

The landlord testified that the rental arrears for March and April 2013 have not been paid. The landlord acknowledged that the rent owed for May 2013 was paid in the amount of \$2,000.00.

The landlord is seeking an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and a monetary order for the arrears.

The landlord is also claiming \$14.00 in bank fees, but did not provide a receipt.

In addition to the above, the landlord is seeking utility charges for water consumption. In evidence was a copy of the tenancy agreement confirming that water was not included in the rent. The landlord also submitted a copy of the annual water invoice from the municipality for the period from January 1, 2013 to December 31, 2013 due in April 2013. The invoice shows the previous bill for 2012 to be a total of \$651.00 covering 12 months. The landlord testified that the \$338.50 claim for payment of water utilities is based on a pro-rated amount for the tenancy period from November 1, 2012 to May 1, 2013.

The tenant's agent acknowledged that the tenant did not pay the rent for March and April 2013. The tenant's agent gave numerous reasons as to why the rent could not be paid and also pointed out deficiencies in the plumbing of the rental unit. The tenant's agent also stated that they had paid the rent for May in full with the understanding that the occupant would become the tenant under a new tenancy agreement.

## **Analysis**

I find that the defences put forward by the tenant's agent with respect to the circumstances that affected the tenant's ability to pay the rent, whether true or not, are not material considerations in the matter before me.

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that this tenant did neither.

In this instance I find that the tenant was in arrears at the time the Notice was served on April 24, 2013 and the tenant did not pay the arrears within the 5-day deadline to cancel the Notice.

I find that the tenant has not paid all of the outstanding rent 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.

In regard to the tenant's agent's testimony that, as occupant, he was offered a new tenancy agreement by the landlord to commence in his own name, replacing the tenancy in the current tenant's name, I find that, even if this did occur, it would not be in compliance with the Act. I find that the landlord would first be legally obligated to terminate the existing tenancy with the current tenant. Whether the occupant paid all or part of the rent for May 2013, the landlord would not be at liberty to offer a new tenancy with the occupant until he had properly ended the existing tenancy as provided under the Act.

Based on the evidence before me, I find that the landlord is entitled to rental arrears in the amount of \$4,000.00.

In regard to the bank charges, I find that the landlord has not submitted sufficient evidence to justify this portion of the claim.

In regard to the landlord's claim for payment of the tenant's share of the water bill, I find that the April 24, 2013 Ten Day Notice to End Tenancy for Unpaid Rent indicated that the landlord gave a written demand for payment on April 2, 2013.

Section 46, (6) states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a Ten-Day Notice based on utilities owed.

I find that, when the landlord issued the Notice, the 30-day period had not yet expired and therefore the utility claim would not be considered as rent under the Act.

That being said, I find that the tenancy agreement signed by the tenant does indicate clearly that the tenant will be responsible for paying for water. I find that the tenant must compensate the landlord for the water consumed for November and December 2012 in the amount of \$108.50.

Given the above I find that the landlord has established a total monetary claim of \$4,158.50 comprised of \$4,000.00 rent, \$108.50 for utilities for the two-month period from November 1, 2012 and December 31, 2012 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$1,000.00 in partial satisfaction of the claim, leaving a balance due to the landlord in the amount of \$3,158.50.

The landlord has consented to permit the tenant and occupant to remain in the rental unit, for use and occupancy only, until June 30, 2013, provided that the \$2,000.00 rent due on June 1, 2013 is paid in full. Accordingly I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. on Sunday, June 30, 2013. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 for \$3,158.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord is partly successful in the application and is granted a monetary order and an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

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

