



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C & L PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and breach of an agreement. The landlord also applied for a Monetary Order for unpaid rent, loss of rent, anticipated cleaning costs; and, authorization to retain the security deposit. Neither the tenant nor his agent appeared at the hearing. The landlord provided a registered mail receipt as proof the hearing documents were sent to the tenant at the rental unit on May 17, 2013. A search of the tracking number showed the tenant had received the hearing documents. I had also received submissions from the tenant's agent prior to the hearing. Therefore, I was satisfied the tenant was notified of these proceedings and I continued to hear from the landlord in the absence of the tenant or his agent.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for the amounts claimed?
3. Is the landlord authorized to retain any or all of the security deposit?

### Background and Evidence

The month-to-month tenancy commenced April 1, 2013 and the tenant paid a security deposit of \$356.00. The tenant was required to pay rent of \$712.00 on the 1<sup>st</sup> day of every month. The tenant failed to pay rent for the month of May 2013 when due and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on May 8, 2013. The Notice indicates the tenant failed to pay rent of \$712.00 as of May 1, 2013 and had a stated effective date of May 18, 2013.

On May 26, 2013 the landlord received a signed document indicating the tenant had appointed an agent to represent him with respect to his tenancy and any matters related to these proceedings. On May 31, 2013 the tenant's agent presented the landlord with

a certified cheque in the amount of \$1,424.00, the equivalent of two month's rent for May and June 2013, and a letter signed by the tenant.

The landlord read from the letter of May 31, 2013 during the hearing. The content of the letter indicated the tenant would vacate the unit no later than June 9, 2013 and the tenant requested the landlord attempt to re-rent the unit after that date and if the landlord was successful in doing so the landlord would refund the tenant a pro-rated portion of June's rent. In the letter, the tenant requested the landlord acknowledge receipt of the letter by signing the letter and returning a copy of the letter to him.

The landlord testified that the landlord accepted the terms proposed in the tenant's letter of May 31, 2013 and returned a signed copy of the letter to the tenant's agent. The landlord proceeded to find a new tenant for the unit which it has done effective June 15, 2013.

On June 9, 2013 the landlord inspected the rental unit and found the tenant's possessions were still in the unit. Based upon the 10 Day Notice and the subsequent agreement reached between the parties by way of the May 31, 2013 letter, the landlord requested an Order of Possession be provided as soon as possible so as to facilitate the arrival of the incoming tenant.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice; written summary of events by the landlord; the authorization letter of May 26, 2013; the certified cheque dated May 31, 2013 and a promissory note between the tenant and his agent.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served a 10 Day Notice to the tenant on May 8, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice the tenancy ended pursuant to the 10 Day Notice on May 18, 2013.

Where a tenant comes forward with the rent after the end of a tenancy, the issue of waiver or reinstatement arises. In this case, payment of the outstanding rent for May 2013 and rent for June 2013 was presented to the landlord and I have considered whether the 10 Day Notice was withdrawn or the tenancy reinstated.

Based upon the landlord's reading of the tenant's letter dated May 31, 2013 and the landlord's undisputed testimony during the hearing I am satisfied that the tenancy was not reinstated but that the landlord accepted the rent for May and June 2013 with the mutual agreement that the tenant would be permitted occupancy of the unit until June 9, 2013 after which time the landlord was at liberty to re-rent the unit. As June 9, 2013 has since passed, I grant the landlord's request for an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service.

As the outstanding rent has since been satisfied I do not provide a Monetary Order to the landlord. I make no award for anticipated cleaning costs as such claims are premature and dismissed with leave.

I award the landlord the \$50.00 filing fee paid for this application. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: June 12, 2013

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Residential Tenancy Branch

