



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR

For the tenant - MT

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The landlord applied for an Order of Possession due to unpaid rent and for a Monetary Order to recover unpaid rent. The tenant applied for more time to pay the rent.

The tenant dialed in late to the conference call just as the hearing was being concluded. I briefly recapped to the tenant the landlords' testimony. I find that the landlords served the tenant pursuant to s. 89 of the *Act* with notice of this hearing. The landlords' testify that they were not served with the tenant's application and notice of hearing. Consequently as the tenant has not served the landlord the tenant's application is dismissed.

Both parties appeared, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

This month to month tenancy started on March 14, 2013. Rent for this unit is \$800.00 per month and is due on the 1st of each month.

The landlord JZ testifies that the tenant failed to pay rent for April, 2013. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on April 26, 2013. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice informs the tenant that rent is outstanding to an amount of \$800.00 due on April 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 07, 2013. Since that time the tenant has not paid rent for May, 2013 to the amount of \$800.00 and has also failed to pay rent for June, 2013 to the amount of \$800.00. The total amount of unpaid rent is now \$2,400.00 and the landlords seek a Monetary Order to recover these rent arrears.

The landlords have also applied for an Order of Possession to take effect as soon as possible.

The landlords have provided a copy of the tenancy agreement and a copy of the 10 Day Notice to End Tenancy in documentary evidence.

The tenant joined the hearing and stated that she had some medical issues and could not apply to cancel the notice in time. These issues also meant the tenant had to take a leave of absence from work and is not yet receiving any money from medical EI. The tenant agrees she has not paid rent for April, May and June, 2013. The tenant asks the landlord for more time to pay the rent however the landlords decline this request.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant agrees that she has not paid the outstanding rent and although the tenant did file an application for more time to pay the rent, this section of the application is actually for a tenant to apply for more time to dispute the 10 Day Notice, outside the five day time frame. In any event as the tenant did not serve the landlord correctly with a copy of her application and notice of hearing and the tenant's application has been dismissed without leave to reapply.

Consequently I find the landlords have established a claim to recover unpaid rent for April, May and June, 2013; however, I have limited this claim to \$2,000.00 as the landlords may still be able to re-rent the unit for a period of time in June, 2013. Consequently, the landlord will receive a monetary award to the sum of **\$2,000.00** pursuant to s.67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on April 29, 2013 and the effective date of the notice is amended to May 09, 2013 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,000.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 may be filed in the Supreme Court and enforced as an order of that Court.

The landlord is at liberty to file a new application to recover unpaid rent or loss of rental income if the unit remains unrented.

The tenant's application is dismissed without leave to reapply.

Dated: June 04, 2013

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Residential Tenancy Branch