



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for cause and an Order of Possession because the tenant has breached an agreement with the landlord; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on May 15, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent testifies that this tenancy started with this tenant in the summer of 2011 when the tenant was added to an existing tenancy agreement. This tenant entered into a new fixed term agreement on September 01, 2012 for one year. Rent for this unit was \$900.00 per month and was due on the 1<sup>st</sup> day of each month.

The landlord's agent testifies that the tenant was repeatedly late paying rent and a One Month Notice to End Tenancy was served upon the tenant on April 11, 2013. The notice gave the tenant four reasons to end the tenancy as follows:

1. The tenant is repeatedly late paying rent.
2. The tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
3. The tenant has assigned or sublet the rental unit without the landlords' written consent
4. The tenant knowingly gave false information to prospective tenants or purchaser of the rental unit/site or property/park

The landlord's agent testifies the tenant failed to pay rent for May, 2013 of \$900.00 and moved from the rental unit without the landlord's knowledge sometime around the end

of May, 2013. The landlord therefore seeks a Monetary Order to recover unpaid rent for May of \$900.00.

The landlord's agent testifies that as the tenant has not paid rent for June the landlord seeks to recover a loss of rental income for June of \$900.00 as this is a fixed term tenancy. The landlord's agent testifies that the tenant failed to clean or make repairs to the unit and the landlord has to undertake this work before the unit can be re-advertised for rent. The landlord also seeks to recover the filing fee from the tenant of \$50.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me of the landlord's agent. I refer the parties to s. 26 of the *Act* which 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.*

I am satisfied with the evidence and testimony before me that the tenant failed to pay rent for May, 2013 and I therefore find in favor of the landlords claim to recover this rent of **\$900.00**.

With regard to the landlords claim for a loss of rental income for June, 2013; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss

of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Consequently as this is a fixed term tenancy which has an end date of August 31, 2013, I find the landlord is entitled to recover a loss of rent for June, 2013 as claimed to the sum of **\$900.00**. The landlord may be entitled to file a further claim for unpaid rent if after attempting to mitigate the loss by re-renting the unit in a timely manner, the unit remains unrented for the remainder of the term of the tenancy.

I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the amount of **\$1,850.00** pursuant to s. 67 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 **\$1,850.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order 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: June 12, 2013

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Residential Tenancy Branch