



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Check Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities.

The landlord had originally applied by way of the Direct Request Process, being an application without a hearing pursuant to Section 55(4) of the *Residential Tenancy Act*, and the matter was adjourned to today's date for a participatory hearing. An Interim Decision was provided to that effect and required the landlord to serve the tenant with a notice of the hearing date.

The landlord company was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Interim Decision and notice of hearing documents by registered mail on May 8, 2013, the tenant did not attend. The landlord's agent gave oral testimony of the date and tracking number assigned by Canada Post for the service, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord was also given the opportunity to provide copies of receipts after the hearing had concluded, which were for rent and were given to the tenant since the Interim Decision was made. All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?  
Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 4, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the hearing the landlord collected a security deposit from the tenant in the amount of \$475.00 as well as a pet damage deposit in the amount of \$100.00, all of which is still held in trust by the landlord. A copy of the tenancy agreement was provided for this hearing.

The landlord's agent further testified that when the Landlord's Application for Dispute Resolution was filed, the tenant had failed to pay \$900.00 for rent that was due on April 1, 2013, and that the application contained an error which indicated that the tenant was in arrears \$940.00.

The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 3, 2013. A copy of the notice was provided for this hearing, and it states that the tenant failed to pay \$940.00 that was due on April 1, 2013 and contains an expected date of vacancy of April 17, 2013. Both pages of the 2-page form have been provided. The notice was served by posting it to the door of the rental unit on April 3, 2013.

Since filing the application, the tenant has made 3 rental payments to the landlord: April 25, 2013 the tenant paid \$650.00 cash; May 6, 2013 the tenant paid \$270.00 in cash; and May 9, 2013 the tenant paid \$100.00 cash, for a total of \$1,020.00. On each occasion, the landlord provided the tenant with a receipt showing that the rent was being received "for use and occupancy only," and copies of those receipts have been provided. However, no further payments have been made and another month of rent has become due. The landlord requests an Order of Possession and a monetary order for the arrears of rent as well as loss of revenue for the month of June, 2013.

The landlord's agent testified that the tenant has not served the landlord with an application for dispute resolution.

### Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a notice to end tenancy on any date after the date rent is payable under the tenancy agreement. Once served, or deemed served, the tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, I have reviewed the notice to end tenancy and I find that it is in the approved form and contains the appropriate information as required by the *Act*. I further find that the tenant has not disputed the notice and is therefore conclusively presumed to have accepted that the tenancy has ended.

I further accept that the tenant has made some payment towards rent since the issuance of the notice, but unless the tenant pays the rent in full within 5 days, the notice is still effective. I further find that the tenant has not disputed the notice within the 5 days as required, and I find that the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I accept the undisputed testimony of the landlord that the tenant was in arrears \$900.00 when the application was originally filed, the tenant made some payments towards the arrears, and rent for the month of May has also now become due. The landlord has requested that the monetary order also include rent for the month of June, 2013, and I refer to Residential Tenancy Policy Guideline 3, Claims for Rent and Damages for Loss of Rent, which states that non-payment of rent is considered to be a fundamental breach of the tenancy agreement. The guideline also states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement, and that 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.

I find that the landlord has established a monetary claim as against the tenant as follows:

DATE	AMOUNT DUE	AMOUNT PAID	AMOUNT OUTSTANDING
APRIL 1, 2013	\$900.00		\$900.00
APRIL 25, 2013		\$650.00	\$250.00
MAY 1, 2013	\$900.00		\$1,150.00
MAY 6, 2013		\$270.00	\$880.00
MAY 9, 2013		\$100.00	\$780.00
JUNE 1, 2013	\$900.00		\$1,680.00

Since the landlord has been successful with the application, I find that the landlord is entitled to recovery of the \$50.00 filing fee for the cost of the application.

The landlord has not applied for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and I leave it to the landlord and tenant to comply with Section 38 of the *Residential Tenancy Act* as it relates to both deposits.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,730.00.

This order is final and binding on the parties and may be enforced.

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 04, 2013

---

Residential Tenancy Branch