



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; 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*, and the landlord has provided a proof of service document, signed by the tenant, acknowledging that the hearing documents were served in person to the tenant on May 24, 2013.

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. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover 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 month to month tenancy started on November 01, 2011. Rent for this unit is \$850.00 per month with an additional \$30.00 per month for parking. These payments are due on the 1st of each month. The landlord has provided a copy of the tenancy agreement signed by the parties and a copy of the parking agreement in documentary evidence.

The landlord's agent testifies that the tenant failed to pay the rent due for April and May, 2013 leaving an unpaid balance of \$1,700.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2013. This was posted to the tenant's door on May 02, 2013 and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$1,700.00 which was due on May 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 15, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenant paid \$950.00 and an additional \$200.00 on June 15, 2013. The landlord's agent testifies that this was accepted for use and occupancy only. The landlord's agent testifies that total amount of outstanding rent is now \$650.00.

The landlord's agent testifies that the tenant had agreed to pay parking fees of \$30.00 per month and also failed to pay these fees for May, 2013. The landlord seeks to recover \$30.00 from the tenant.

The landlord testifies that there is a clause in the tenancy agreement relating to late payments of rent. This clause notifies the tenant that the landlord will apply a charge of \$20.00 per month for any months in which rent is late. The landlord therefore seeks to recover late fees for May, 2013 of \$20.00.

The landlord requests an Order of Possession to take effect as soon as possible; a Monetary Order to recover the unpaid rent, parking and late fees and the filing fee of \$50.00.

Analysis

Section 26 of the *Residential Tenancy Act* (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.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord that the tenant owes rent arrears for May, 2013. The landlords rent ledger provided in evidence shows that the tenant did not pay rent in April or May, 2013. This rent ledger also shows that the tenant made a payment of \$400.00 on May 13, 2013 and a further \$400.00 on May 21, 2013. The landlord testifies that the tenant also made a payment of \$950.00 on June 15 and \$200.00 on June 15, 2013. The landlord testifies that the payments made were accepted for use and occupancy only and I find that by accepting these payments the landlord did not reinstate the tenancy. I therefore find that the rent arrears are \$600.00 and the landlord is entitled to recover these rent arrears as detailed above. Consequently, the landlord will receive a Monetary Order to the sum of **\$600.00**.

I further find the landlord is entitled to recover the parking fees of **\$30.00** for May, 2013 as specified in the parking agreement. The landlord has also established that the tenancy agreement signed by the parties notified the tenant that a late fee of \$20.00 will be applied in any month that rent is late. As rent was late for May, 2013 the landlord is entitled to charge the tenant **\$20.00** in late fees.

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 tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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*.

The landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) 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 **\$700.00** pursuant to s. 67 of the *Act*. This amount is comprised of unpaid rent, late fees, parking fees and the filing fee. 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 upon 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.

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 21, 2013

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Residential Tenancy Branch