



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, OPB, MND, MNR, MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; 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 or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; 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.

During the hearing the landlord withdrew his application for an Order of Possession for cause. The landlord also withdrew his application for damage to the unit, site or property at this time.

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 24, 2013. The landlord amended his application and served the tenant in person on June 12 with a copy of the amended application. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the original hearing documents on the fifth day after they were mailed and deemed to have been served the amended application on the day it was served as per section 90(a) of the *Act*.

The landlord 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.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession because the tenant breached an agreement with the landlord?
- 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?
- Is the landlord permitted to keep the tenants security and pet deposit?

Background and Evidence

The landlord has provided a copy of the tenancy agreement in documentary evidence which states that this tenancy started on December 01, 2012 for a fixed term which must end on May 31, 2013 at which time the tenant must move out. Rent for this unit is \$775.00 plus utilities. Rent is due on the last day of each month. The tenant paid a security deposit of \$387.50 and a pet deposit of \$387.50. These deposits were paid on December 01, 2012.

The landlord testifies that the tenant has not moved from the rental unit despite agreeing that the tenancy would end on May 31, 2013. The landlord therefore seeks an Order of Possession on this ground.

The landlord testifies that the tenant has failed to pay all the outstanding rent owed from April and May, 2013. A 10 Day Notice was served upon the tenant by registered mail and in the tenant's mail box on May 06, 2013. This notice informs the tenant that he owes rent of \$1,150.00 which was due on May 01, 2013. The Notice also informs the tenant that the tenant has five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on May 19, 2013. The landlord testifies that since that time the tenant paid \$300.00 on May 09, 2013 and \$125.00 on May 31, 2013. The landlord testifies that the tenant also

failed to pay all the rent for June, 2013. Welfare paid an amount of \$375.00 on May 31, 2013 towards Junes rent leaving an unpaid balance of \$400.00. The total amount of rent arrears are now \$725.00 for April and May and \$400.00 for June. The landlord testifies that he informed the tenant that the tenancy must still end and the landlord extended this time to June 30, 2013.

The landlord seeks an Order of Possession based on the 10 Day Notice effective June 30, 2013. The landlord also seeks a Monetary Order to recover the unpaid rent. Of \$1,125.00.

The landlord seeks to keep the tenants security deposit and pet deposit in partial satisfaction of unpaid rent. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The landlord testifies that as he is unsure when the tenant will be moving out and due to the damages at the rental unit which the landlord has concerns the tenant will not repair; the landlord also seeks a monetary award for a loss of rental income for July, 2013 of \$775.00.

### 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. 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.*

Consequently I am satisfied with the undisputed evidence before me that the tenant has failed to pay all the rent for April, May and June 2013. The landlord is entitled to recover rent arrears to the sum of **\$1,125.00** pursuant to s.67 of the *Act*.

With regard to the landlord claim to recover a loss of rental income for July, 2013, as this hearing is held on June 21, 2013 the landlord does not yet know when the tenant will vacate the rental unit or when the rental unit could be re-rented from. I therefore dismiss this section of the landlords claim for a loss of rental income for July with leave to reapply.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposits of **\$775.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,125.00
Less security and pet deposit	(-\$775.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$400.00</b>

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on March 21, 2013 and the effective date of the notice is amended to March 31, 2013 pursuant to section 53 of the *Act*. The Notice states that the tenant has 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 section 55 of the *Act*.

With regard to the landlords application for an Order of Possession because the tenant breached an agreement with the landlord; as an Order of Possession has been issued to

the landlord for unpaid rent I do not have to deal with this section of the landlords claim for a second Order of Possession.

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 **\$400.00**. 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 landlords effective **June 30, 2013**. 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 reapply for a loss of rental; income for July, 2013.

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

