



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTIES SERVICE LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNSD, OLC, MNDC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for lost wages and the filing fee. The tenant also applied for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing, the landlord requested that her application be amended to withdraw the portion of her application to retain the security deposit. She stated that she would deal with the return of the deposit directly with the tenant at the end of tenancy.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on August 01, 2011. The current rent is \$782.00 payable on the first of the month. The tenant's rent cheque for April 2013 was returned for insufficient funds. The landlord filed a copy of the ledger showing that as of June 17, 2013, the tenant owed the landlord \$782.00 in unpaid rent. On this date the landlord served the tenant with a ten day notice to end tenancy for non payment of rent.

The tenant stated that he was not aware that he owed the landlord rent and since he had paid rent for June, he believed that he did not owe rent. On June 18, 2013 the tenant filed an application to dispute the notice to end tenancy. On July 01, 2013 the tenant paid rent for July, but still owed \$782.00. On July 02, 2013, the tenant paid all the outstanding rent

The landlord stated that the tenant did not pay rent within five days of receiving the notice and she accepted rent for use and occupancy only. The landlord testified that the tenancy was not being reinstated and requested an order of possession for July 31, 2013.

The tenant stated that paid his outstanding rent as soon as he found out that he owed the landlord. He testified that had the landlord informed him earlier, he would have paid his arrears within the five days of receiving the notice.

The tenant also stated that the landlord has requested him to remove one of his dogs due to excessive barking and complaints from the other residents. The tenant is requesting me to order the landlord to refrain from asking him to remove his dog from the rental unit.

The tenant stated that to process his application, he had to take time off work and therefore lost wages in the amount of \$83.00. He is requesting to be compensated for the same.

### **Analysis**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement.

The tenant argued that he was not aware of the fact that his cheque was returned for insufficient funds and that the landlord did not inform him until two months later. By serving the tenant with a notice to end tenancy on June 17, 2013, the tenant was informed that he owed rent and therefore was given the opportunity to pay the outstanding rent within five days. The tenant paid rent but failed to do so within the legislated time frame.

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution.

If the tenant does not pay rent the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy for unpaid rent, on June 17, 2013 and did not pay outstanding rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective on or before 1:00 pm on July 31, 2013. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$50.00. I order that the landlord retain this amount from the security deposit.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's application for compensation for lost wages is dismissed. Since the tenancy is ending, an order directing the landlord to allow the tenant to keep his pet is moot and also dismissed. The tenant has not proven his case and therefore must bear the cost of filing his application.

### **Conclusion**

I grant the landlord an order of possession effective on or before 1:00 pm on July 31, 2013. The landlord may retain \$50.00 from the security deposit.  
The tenant's application is dismissed.

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: July 18, 2013

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Residential Tenancy Branch

