



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNSD, 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 his monetary claim. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **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?

### **Background and Evidence**

The tenancy started in October 2011. The tenant rented a portion of the basement and paid his rent directly to the landlord. Prior to moving in the tenant paid a security deposit of \$212.50.

Since the start of tenancy, the remainder of the basement was rented by various tenants for various periods of time. In February 2012, a tenant entered into an arrangement directly with the landlord and rented a room in the basement for \$500.00 per month. He pays his rent each month, directly to the landlord.

The tenant stated that he had several problems in the rental unit including lack of heat. He testified that right from the start of the tenancy, the basement was not heated adequately and despite several reminders to the landlord, the situation remained unchanged. The tenant stated that more recently he had problems with the plumbing.

The tenant decided that he would buy a heater at the landlord's cost and did so. To recover the money he had spent, the tenant did not pay rent for June.

On June 18, 2013, the landlord served the tenant with a notice to end tenancy for non payment of rent. The tenant disputed the notice in a timely manner and continued to occupy the rental unit without paying rent for June. At the time of the hearing, the tenant had also not paid rent for July. The tenant agreed that he owed the landlord \$850.00 but stated due to the lack of proper maintenance of the rental unit and due to lack of adequate heat, he did not owe rent until these issues were resolved. I explained to the tenant that he is at liberty to make separate application to address these issues.

The tenant also informed me that he had returned the heater to the store that he had purchased it from and at the time of the hearing he had not incurred any out of pocket expenses that he believed that the landlord was responsible for.

The landlord has applied for an order of possession effective on or before 1:00 pm on July 31, 2013 and for a monetary order for unpaid rent (\$850.00) and the filing fee (\$50.00).

### **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.

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 or dispute the notice, 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 18, 2013 and did not pay 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.

I find that the landlord has established a claim of \$850.00 for unpaid rent. Since the landlord has proven her claim she is also entitled to the recovery of the filing fee of \$50.00.

I order that the landlord retain the security deposit of \$212.50 in partial satisfaction of her claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$687.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

### **Conclusion**

I grant the landlord an order of possession effective on or before **1:00 pm on July 31, 2013**. I also grant the landlord a monetary order in the amount of **\$687.50**.

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 23, 2013

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Residential Tenancy Branch

