



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GROSVENOR CANADA LIMITED AND  
ADMNS CAMBIE INVESTMENT CORP.  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MND, MNR, OPR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent, a monetary order for accrued rental arrears and monetary compensation for cleaning and repair costs of the suite.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 5, 2013, the tenant did not appear. The landlord provided proof of service including the Canada Post registered mail tracking number.

### **Preliminary Matter**

The landlord has included claims for cleaning and repairs. However, the tenant has not yet vacated the rental unit and I find that the landlord's claims for damages are premature. Under the Act, the move-out condition inspection cannot be performed until the tenant has removed his possessions. I find that that tenant must be afforded an opportunity to clean and repair the unit prior to vacating. Accordingly the portion of the landlord's application claiming reimbursement for cleaning and damages must be dismissed and I do so with leave to reapply

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord is entitled to monetary compensation for rental arrears owed?

### **Background and Evidence**

The tenancy began in April 2009 and the current monthly rent is \$2,132.83. A security deposit of \$1,126.98 was paid.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent confirming that, as of May 16, 2013, the tenant had fallen into arrears for \$2,132.83. The landlord testified that the tenant later paid the arrears in full approximately 2 weeks after the Notice was served. The landlord testified that by the time the tenant paid the arrears for May, 2013, the rent for June 2013 was past due and this payment was therefore made too late to cancel the May 16, 2013 Notice.

According to the landlord, they accepted the payment for use and occupancy only with the intent to still proceed with ending the tenancy. The landlord testified that the tenant still owes the rent for June 2013 and now is in arrears for July 2013 for total rental arrears of \$4,265.66. The landlord is seeking a Monetary Order for this amount plus an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on May 7, 2013. I find that the tenant paid the arrears past the 5-day deadline under the Act to cancel the Notice. The tenant did not apply to dispute the Notice within the 5-day deadline prescribed under the Act and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts, I find that the landlord is entitled to an Order of Possession.

With respect to rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. I find that the tenant failed to pay the rent when rent was due and paid the arrears past the 5 days under the Act to cancel the Notice. I find that the tenant has since accrued further arrears for June and July 2013. Accordingly I find that the landlord's claim for further accrued rental arrears in the amount of \$4,265.66 is fully supported by the evidence before me.

I find that the landlord is entitled to total compensation of \$4,365.66, comprised of \$4,265.66 arrears and the \$100.00 cost of the application. I order the landlord to retain the tenant's security deposit of \$1,126.98 in partial satisfaction of the claim leaving \$3,238.68 still outstanding.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on 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.

I hereby grant the Landlord an order under section 67 for \$3,238.68. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed with leave to reapply.

**Conclusion**

The landlord is partly successful in the application and is granted a monetary order and Order of Possession, while the remainder of the monetary claims for damages are dismissed with leave as premature.

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 02, 2013

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Residential Tenancy Branch