



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This application was brought by the landlord seeking a monetary order for rental arrears and an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated June 24, 2013.

Despite being served in person on June 21, 2013, the respondent did not appear.

### **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 entitled to Monetary Compensation based on the 10-Day Notice to End Tenancy for Unpaid Rent?

### **Background and Evidence**

The tenancy began approximately 1.5 years ago and the rent is \$700.00. A security deposit of \$350.00 was paid.

Submitted into evidence was a copy of the tenancy agreement signed by the landlord and tenant.

The landlord testified that the tenant failed to pay him the \$700.00 rent owed for the months of March, April, May and June 2013, and a 10-Day Notice to End Tenancy for Unpaid Rent was issued.

The landlord submitted into evidence a copy of a 10-Day Notice to End Tenancy for Unpaid Rent dated June 21, 2013, which the landlord testified was served on the tenant by posting it on the door.

The landlord testified that the tenant did not dispute the Notice within the required 5 days and did not pay any of the arrears owed. The landlord is seeking an Order of Possession based on the Notice.

The landlord stated that he is also seeking a monetary order for the rental arrears. The landlord testified that the amount of the arrears, including unpaid rent for July, 2013, is now \$3,500.00.

The landlord testified that the tenant has apparently been paying rent to his former partner, who used to collect the rent and who currently continues to reside in a suite within the building. According to the landlord, although his former partner occupies one of the suites in the building, she is not the landlord. The landlord testified that he is the sole owner and landlord and the tenant was directed to pay the rent to him..

### **Analysis**

Section 26(1) of the Act states that 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.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, the Act provides that, within 5 days after receiving a notice under this section, the tenant may dispute the Notice. The tenant may also choose to pay the overdue rent, in which case the Notice is automatically cancelled.

If a tenant who has received a Ten-Day Notice to End Tenancy for Unpaid Rent does not pay the rent or make an application for dispute resolution to dispute the Notice, within the five-day deadline, then 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 to which the notice relates by that date. (My emphasis)

I find that that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent and did not pay the rent owed within 5 days, and the tenant failed to dispute the Notice.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

With respect to the monetary order, I find that the amount owed was not verified by any evidence and the total is unclear as the tenant has been making rent payments to another party who had collected the rent in the past. I find that no documentation was

submitted into evidence by the landlord to confirm the status of the tenant's rental account, the amount of arrears owed nor that the tenant was formally notified in writing about changes in where or how to pay the rent.

For this reason, I find that the portion of the landlord's application seeking monetary compensation must be dismissed.

I hereby issue an Order of Possession in favour of the landlord effective August 15, 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.

I hereby dismiss the landlord's claim for monetary compensation for alleged rental arrears without leave to reapply.

I find that the landlord is not entitled to be compensated for the \$50.00 cost of the application because the landlord was not completely successful in the application.

The return of the tenant's security deposit must be administered in accordance with section 38 of the Act.

### **Conclusion**

The landlord is partly successful in the application and is granted an Order of Possession but the landlord's monetary claim is dismissed without leave to reapply.

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 24, 2013

---

Residential Tenancy Branch

