



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Prang Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on June 26, 2013, the tenant did not attend. The landlord testified that the documents were served on that date and in that manner and provided a copy of the Canada Post customer receipt showing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the conference call hearing was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 2, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant failed to pay rent in full for the month of April, 2013, having only paid the landlord \$200.00. The tenant further failed to pay any rent for the months of May or June, 2013, leaving a balance of unpaid rent in the amount of \$1,900.00.

On June 5, 2013 the landlord's agent witnessed another employee of the landlord company serve the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice was provided for this hearing and it is dated June 5, 2013 and states that the tenant failed to pay rent in the amount of \$1,900.00 that was due on June 1, 2013. The notice contains an expected date of vacancy of June 17, 2013. Also provided is a signed Proof of Service document that provides the same evidence as the testimony of the landlord's agent.

The tenant was offered work by the landlord in exchange for some of the rental arrears, and the tenant accepted. The tenant did some painting and other chores for the landlord, and the landlord has applied to amend the claim by reducing the amount from \$1,900.00 to \$1,551.25 to allow for that compensation. Near the end of June, 2013 the tenant found outside work and paid rent in full for the month of July, 2013 for which the landlord issued a receipt that clearly stated that the rent was being accepted for use and occupancy only.

The landlord claims an Order of Possession on 2 days notice to the tenant and a monetary order in the amount of \$1,551.25 and recovery of the \$50.00 filing fee for the cost of the application.

### Analysis

The *Residential Tenancy Act* states that on any day after the date that rent is payable under the tenancy agreement a landlord may serve a tenant with a notice to end tenancy if rent remains unpaid. Once served, the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the

tenancy ends on the effective date of the notice and must move out by that date, which must be no less than 10 days after the tenant has been served with the notice.

In this case, I have reviewed the notice to end tenancy, and I find that it is in the correct form. I also accept the testimony and written Proof of Service document provided by the landlord's agent that the tenant was personally served with the notice on June 5, 2013. The tenant did not pay the outstanding rent within 5 days of receiving the notice and has not disputed the notice, and therefore I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and the landlord is entitled to an Order of Possession.

With respect to the monetary order, I accept the undisputed testimony of the landlord's agent that the tenant was offered work in exchange for rental arrears by the landlord, and the landlord has reduced the original claim to compensate the tenant for that work. I find that the landlord has established a monetary claim as against the tenant in the amount of \$1,551.25. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order the landlord to keep the security deposit of \$350.00 and I grant the landlord a monetary order for the difference in the amount of \$1,251.25.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit in the amount of \$350.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,251.25.

This order is final and binding on the parties and may be enforced.

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

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Residential Tenancy Branch

