



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CONFIDE ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the landlord to obtain an Order of Possession for unpaid rent or utilities and a monetary order: for unpaid rent and utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of this application from the tenant. The landlord also applied to keep all or part of the security deposit.

The landlord filed this application on June 4, 2013 and served both tenants in person on the same day with a copy of the application and Notice of Hearing documents. Based on this, I find that the tenants were served the hearing documents as per the *Residential Tenancy Act*.

The landlord attended the hearing to give affirmed testimony and provided evidence in advance of the hearing. The landlord was also permitted, under Section 11.5 of the Rules of Procedure, to provide additional evidence after the hearing had concluded, namely the receipt issued to the tenant for a cash payment made after the notice to end tenancy was served. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent and losses incurred under the Act?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that the tenancy started on April 1, 2013 for a fixed term of 1 year due to end on April 30, 2014. The landlord collected a security deposit from the tenants in the amount of \$655.00 on March 27, 2013. Rent in the amount of \$1,330.00 is payable by the tenants on the 1<sup>st</sup> day of each month which includes a parking space.

The landlord testified that the tenants had not paid rent for April and May, 2013 in the amount of \$2,260.00. As a result, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on May 22, 2013 with an expected date of vacancy of June 1, 2013. The notice to end tenancy was served personally to one of tenants who signed the Proof of Service document to confirm receipt; both documents were provided as evidence for the hearing.

The landlord further testified that since the time of issuing this notice and making the Application for Dispute Resolution, the tenants have also failed to pay June's rent. However, on June 14, 2013, the tenant paid the landlord \$1,100.00 in cash towards the total outstanding rent arrears of \$3,990.00. The landlord accepted the payment and issued the tenants a cash receipt stating that the payment was being accepted for 'temporary occupancy only, does not re-instate the tenancy'. This was provided as evidence after the hearing.

As a result, the landlord seeks an Order of Possession, and to recover the outstanding balance of \$2,890.00 in rent arrears.

The tenants failed to attend the hearing or provide any written submissions prior to this hearing taking place.

### Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice, I find that its content complies with the *Act*. Based on the tenant's own confirmation, I also find that the tenants were served the notice to end tenancy on May 22, 2013, and had until May 27, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*. The landlord has accepted a partial

payment of \$1,100.00 towards the outstanding balance of \$3,990.00, but issued the tenant with a receipt that states the money was being accepted for use and occupancy only and does not re-instate the tenancy. Therefore, I find that the tenancy has not been re-instated and that the notice to end tenancy is still in effect. Since the tenants failed to make an application or dispute the notice, I find that the landlord is entitled to an Order of Possession.

In the absence of any evidence from the tenants, I find that the landlord is entitled to recover \$2,890.00 of rent outstanding for April and May, 2013, and for June, 2013 as the landlord has not received full possession of the rental suite from the tenant.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$2,940.00. As the landlord already holds a \$655.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$2,285.00.

### Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective **2 days after service on the tenants**. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

I find that the landlord is also entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,285.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 03, 2013

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Residential Tenancy Branch

