



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and for the recovery of the filing fee. 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? Is the landlord entitled to a monetary order to recover unpaid rent, and the filing fee?

### **Background and Evidence**

The tenancy started approximately three years ago. The rental property consists of a two level home. The main level has four bedrooms and the lower level has three bedrooms. The tenant rented a bedroom in the upper level for \$450.00. Prior to moving in the tenant paid a security deposit of \$250.00.

In December, 2012, the basement became vacant and the tenant requested the landlord to allow him to move into the basement. The landlord testified that the occupant of the basement who had just vacated was paying monthly rent in the amount of \$1,200.00 but the tenant asked the landlord to reduce the rent to \$1,000.00 and told the landlord that he would find a roommate to share rent with. The landlord agreed and the tenant moved into the basement. There is no written agreement to document this arrangement.

The tenant stated that he did not agree to pay \$1,000.00 and that his rent was \$500.00. He also stated that it was the landlord's responsibility to find a tenant to share the rent of \$1,000.00. The landlord argued that the tenant had agreed to find a roommate and had one or more of his friends living in the basement on an ongoing basis.

When the landlord spoke to these roommates, they informed the landlord that they dealt solely with the tenant regarding rent and they refused to have anything to do with the landlord.

When the landlord did not receive \$1,000.00 for December, 2012, he served the tenant with a notice to end tenancy for non payment of rent. The landlord stated that the tenant promised to pay but did not. The tenant continued to pay \$500.00 each month and the landlord continued to serve him notices to end tenancy for non payment of rent. The landlord finally applied for dispute resolution after serving the tenant a notice on June 02, 2013. The tenant stated that he did not dispute the notice because he had paid \$500.00 and did not owe rent.

The tenant agreed that he paid rent in the amount of \$350.00 for August 2013. He stated that the landlord owed him \$150.00 and for this reason he deducted this amount off his rent of \$500.00. The landlord denied owing the tenant any money and also added that the tenant does not pay his utility bills which the landlord has been covering.

The landlord has made an application for \$3,500.00 for unpaid rent, \$50.00 for the filing fee and stated that the tenant owes an additional \$650.00 for August, for a total of \$4,200.00. The landlord is also applying for an order of possession effective two days after service on the tenant

### **Analysis**

Based on the sworn testimony of the both parties, I find that the tenant occupies the basement and also has his friend sharing the basement with him. I accept that the landlord contacted the roommate and was told that she dealt solely with the tenant regarding payment of rent. Therefore I find on a balance of probabilities that it is more likely than not that the parties came to an agreement for the tenant to move into the basement, pay rent in the amount of \$1,000.00 and find a roommate to share rent with. I further find that the tenant has had friends living in the basement on an ongoing basis.

Pursuant to my findings stated above. I find the tenant is responsible for paying rent in the amount of \$1,000.00 for the basement and has only paid \$500.00 for all the months since December 2012, except for August 2013 when he paid \$350.00.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Therefore, I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I further find that the landlord is entitled to \$4,150.00 for unpaid rent. Since the landlord has proven his case he is also entitled to the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of 4,200.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **\$4,200.00**.

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: August 27, 2013

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Residential Tenancy Branch

