



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and monetary order for rental arrears, cleaning and repairs.

A previous hearing was held on July 10, 2013 on the tenant's application in which they had unsuccessfully sought to cancel the One Month Notice to End Tenancy for Cause dated June 1, 2013, and the tenant's application was dismissed.

Now the landlord has made this application to obtain the order of possession based on the One Month Notice to End Tenancy for Cause. The landlord is also seeking compensation for unpaid rent, as well as monetary compensation for damages and losses. The landlord seeks to retain the security deposit in partial satisfaction of the monetary claims.

### **Preliminary Matters**

#### **Service of Hearing Documents**

At the outset of the hearing the landlord testified that they had served both tenants with the hearing documents by "Fed-Ex" and the landlord provided proof of the mailing. The landlord testified that they also served both co-tenants by leaving copies of the hearing packages for each participant, attached to the tenant's door.

In addition to the above, the landlord testified that they managed to serve the male co-tenant with the hearing package in person.

Although the landlord served the documents to both of the tenants by couriered mail, I find that they did not choose the option requiring that the recipient must personally sign a receipt for the express mail upon delivery. Instead, this particular courier service delivered the mail *without* any requirement for a signed confirmation from the specific addressee.

I find that the landlord has applied for a Monetary Order under section 67 of the Act which requires that the landlord serve the tenant as set out under section 89(1) of the Act, below:

(a) **by leaving a copy with the person, (personal service);**

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) **by sending a copy by registered mail to the address at which the person resides or**, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Had the landlord chosen the option of delivery that required confirmation by the addressee's signature in accepting the package, the express mail method of service would be considered equivalent to registered mail service and would therefore meet the above requirements of the Act.

However, in this case, because the landlord had served the documents by couriered mail *without* choosing the signature-on-delivery option, I find that the landlord has not sufficiently met the requirement under the Act for proper service of the hearing package to the female respondent.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution to one of the co-tenant/respondents, I have determined that the landlord's application will proceed against the Male co-tenant only, as he was properly served in person with the Notice of Hearing documents.

### Monetary Claims For Damage and Cleaning

The landlord is claiming costs for cleaning, disposal and repairs.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when

the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord did conduct a move-in condition inspection but the move-out condition inspection report has not been completed yet because the tenant is occupying the rental unit. Prior to vacating, a tenant is entitled to be afforded an opportunity to clean the unit and repair any damage, so that the rental unit, can be turned over to the landlord in a reasonably clean, undamaged condition.

Given the above, I find that the portion of the landlord's claim relating to cleaning and repairs of the rental unit are premature and must be dismissed. I therefore dismiss the monetary claims for water damage, lawn replacement, carpet-cleaning and garbage removal, with leave to reapply once the tenant has vacated and the move-out condition inspection report has been completed.

#### **Monetary Claims For Other Legal Costs**

The landlord's application included claims for the cost of court documents, bailiff fees and affidavits. However, as these costs have not yet been incurred I therefore find the claims are also premature and must be dismissed. I dismiss this portion of the landlord's application with leave to reapply.

The hearing will therefore proceed against the male co-tenant only, for rent, loss of revenue and other expenditures claimed by the landlord.

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

The issues to be determined based on the testimony and the evidence are:

Is the landlord is entitled to an Order of Possession?

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

Is the landlord entitled to compensation for loss of rent and other losses?

### **Background and Evidence**

The tenancy began in October 2011 and rent is \$800.00 per month. A security deposit of \$500.00 was paid.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause and the tenant's previous application to have the 1 Month Notice cancelled was not successful and the Notice was upheld.

The landlord is seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause dated June 1, 2013.

The landlord testified that the tenant did not leave on July 31, 2013, which was the effective date for the Notice, and also failed to pay \$800.00 rent for August 2013. The landlord testified that the tenant remained in the rental unit beyond August 1, 2013, thereby preventing the new tenants from moving into the suite. The landlord testified that the new tenants were forced to reside in the lower unit of the building, instead of occupying the entire home that they had rented. The landlord testified that the new renters were forced to place their possessions in a storage compartment and incurred expenses for this..

The landlord testified that the tenants also purposely disturbed the new renters living below them, by making noise, blocking the parking and verbally confronting the renters thereby compromising their quiet enjoyment.

The landlord testified that, because of the tenant's refusal to vacate and the disturbance they caused, the landlord found it necessary to waive the \$1,300.00 rent that would otherwise have been paid by the newly arriving renters had they been able to fully move in, as planned. The landlord testified that this was done in order to preserve the new tenancy. The landlord is claiming \$1,300.00 in compensation for the rent abatement they gave the other renters for August 2013.

The landlord testified that the tenant has remained in the rental unit and had repeatedly stated that they have no intention of moving out, despite the valid Notice which was upheld. According to the landlord, the tenants have vowed to force the landlord to take all legal measures to forcibly ensure that they vacate the rental unit. For this reason the landlord is claiming a loss of revenue for the month of September 2013, in the amount of \$1,300.00, as it is evident that the tenants are ignoring the legally-obtained Order of Possession and it will take some time to obtain physical possession of the unit.

In addition to the above, the landlord testified that they incurred the liability of having to reimburse the new renters for their storage costs in the amount of \$527.63.

The total monetary claims for the rent and storage is \$3,127.63 plus the \$100.00 cost of the application.

### **Analysis**

Because the tenant's application to cancel the One Month Notice to End Tenancy for Cause was not successful at the previous dispute resolution hearing, I find that the landlord is entitled to an Order of Possession based on the Notice that was upheld.

With respect to the rent, I find that section 26 of the Act states that rent must be paid when it is due. I find that the tenant did not pay in accordance with the Act and must now compensate the landlord for rental arrears in the amount of \$800.00 rent for the month of August 2013. In regard to the landlord's loss of revenue caused by the tenant's refusal to vacate, I find that, in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord to prove that the damage/loss stemmed directly from a violation of the agreement or the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord's claim for \$1,300 a loss of revenue, which amount to an \$300.00 over the \$800.00 owed by the respondents for August 2013 and \$1,300.00 rent for September 2013 have merit. I find that the claim for the rent owed and loss of revenue meets the test for damages. I find that the tenant violated the Act by over-holding beyond the termination date and the landlord is entitled to \$2,600.00 for two months rent and loss of revenue, plus \$527.63 for the storage costs reimbursed to the new renters.

Given the above, I find that the landlord has established a total monetary claim of \$3,027.63 comprised of \$800.00 rent owed by the tenant for August 2013, \$1,600.00 rent abatement granted to the other renters for August and September 2013, \$527.63 for storage costs incurred and the \$100.00 cost of the application.

I order that the landlord retain the tenant's security deposit of \$500.00 in partial satisfaction of the claim, leaving a balance still owed to the landlord of \$2,527.63.

I hereby grant the Landlord an order under section 67 for \$2,527.630. This order must be served on the Respondent and 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.

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 is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

### **Conclusion**

The landlord is partially successful in the application and is granted both a Monetary Order and an Order of Possession. The remainder of the landlord's application is dismissed with 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: August 27, 2013

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Residential Tenancy Branch