



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY AND INSURANCE LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNR CNC OPR OPC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel notices to end tenancy for unpaid rent pursuant to section 46;

This hearing also dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- b) An Order of Possession pursuant to sections 46 and 55;
- c) A monetary order for unpaid rent pursuant to sections 46 and 67; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated August 6, 2013 to be effective August 16, 2013 and the tenant confirmed it was served by registered mail and that he also received the landlord's Application by registered mail. The landlord confirmed he had received the tenant's application also. I find the documents were legally served for the purposes of this hearing.

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

Has the landlord proved on the balance of probabilities that there is unpaid rent and they are entitled to an Order of Possession or has the tenant demonstrated that the notice to end tenancy for should be set aside and the tenancy reinstated?

Has the landlord proved the amount of the unpaid rent and entitlement to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in May 2011, it is now a month to month tenancy, rent is \$650 a month and

a security deposit of \$325 was paid on May 1, 2011. The landlord served a Notice to End Tenancy because the tenant did not pay rent for August 2013.

The tenant agreed he owes \$650 in rent and said he had instructed the Ministry to withhold rent because the building is infested with bugs and the landlord is not addressing the situation adequately. He said it should have been fixed a long time ago and now the whole building is infested; he thinks there are now bed bugs also and there may be some bugs originating from a commercial area downstairs. He said he tried to eradicate the bugs in his suite himself but could not. In the landlord's evidence there are receipts from a Pest Control Co. for regular monthly maintenance treatments. The company notes on one occasion the tenant refused entry. In the hearing, the tenant agreed he denied entry for he said the treatment is not sufficient and the whole building needs to be fogged.

Included with the evidence are a copy of the Notice to End Tenancy, receipts from the pest control company, the lease, a further Notice to End Tenancy for cause to be effective August 31, 2013 and a log of some telephone calls related to the cause cited by the landlord. The tenant has included in his evidence file a statement denying the causes cited and a copy of a summons for him to give evidence relating to charges against another tenant in January 2013.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

The onus is on the party making the claim to prove their claim on a balance of probabilities. I find there is unpaid rent in the amount of \$650 that was due on August 1, 2013; the landlord's evidence is supported by the tenant's acknowledgement of the outstanding rent. Pursuant to sections 46 and 55 of the Act, I find the landlord entitled to an Order of Possession effective two days from service. Although I made an attempt to establish a fixed move out date with the parties, they could not agree as the tenant wanted more time to move than the landlord was willing to grant. As the Notice to End Tenancy effective August 16, 2013 is upheld, I decline to consider the Notice to End Tenancy for cause which would not be effective until August 31, 2013.

The tenant applies to have the Notice set aside as he believes he has good cause to withhold his rent. He states there is a bug infestation in the building but has provided no documentary evidence to support his statements. I find the landlord has provided persuasive evidence that they are not neglecting their obligations to treat the building for pests as they have provided copies of a pest control company's invoices for regular

monthly maintenance. In any event, section 26 of the Act states that a tenant must pay his rent when due whether or not the landlord complies with the Act or a tenancy agreement unless the tenant has a right under the Act to deduct all or part of his rent. Therefore, I dismiss the application of the tenant to set aside the Notice to End Tenancy. If the tenant believed he had reason to deduct some of his rent due to the building's condition, he had the option to apply for such a deduction and possibly be granted a legal rebate of rent but he did not do so but chose to withhold his rent contrary to section 29.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated and the landlord is entitled to an Order of Possession and a monetary order for rental arrears of \$650.

**Conclusion:**

An Order of Possession is issued to the landlord effective two days from service and a monetary order as calculated below. I find the landlord entitled to recover the filing fee for this application and to retain the security deposit to offset the amount owing.

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without leave to reapply.

**Calculation of Monetary Order**

|   |         |
|---|---------|
| Rent arrears August 2013                    | 650.00  |
| Filing fee                                  | 50.00   |
| Less security deposit (no interest 2011-13) | -325.00 |
| Total Monetary Order to landlord            | 375.00  |

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 28, 2013

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Residential Tenancy Branch