



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD FF, CNR, CNC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord applied for an order of possession and a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and to recover the filing fee from the tenant for the cost of the application. The tenant applied for an order cancelling two notices to end tenancy, one for unpaid rent or utilities and one for cause.

The landlord served the tenant a copy of the application and Notice of Hearing documents by registered mail. Section 90 of the *Residential Tenancy Act* states that documents served by mail are deemed to have been received five days after such mailing. The landlord provided the Canada Post tracking receipt as evidence for this method of service and based on this, I find the tenant was served as per the *Act*.

The tenant made the application on June 28, 2013. However, the tenant did not appear for this hearing despite being served notice of it in accordance with the *Act*. Based on this, I dismiss the tenant's application without leave to re-apply.

The landlord attended the hearing to give affirmed testimony and provided evidence in advance of the hearing, all of which was carefully considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent for the month of July and August, 2013?
- Is the landlord entitled to keep the security deposit in full or partial satisfaction of this claim?

### Background and Evidence

The landlord testified that the tenancy started on December 1, 2012 on a month-to-month basis. A written tenancy agreement was completed and the landlord collected a security deposit from the tenant in the amount of \$475.00 on November 28, 2012 which the landlord still retains. The landlord also collected a \$200.00 pet damage deposit in December, 2012 but the landlord allowed the tenant to use this for unpaid rent for January 1, 2013. Rent in the amount of \$950.00 is payable by the tenant on the first day of each month.

The landlord testified that the tenant failed to pay rent which was due on July 1, 2013 in the amount of \$950.00. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 2, 2013 by posting it to the tenant's door with a witness, as evidenced by a proof of service document provided as evidence. The notice, also provided as evidence for the hearing, had an effective date of vacancy of July 12, 2013.

The landlord further testified that since the time of issuing this notice and making the application, the tenant also failed to pay for August, 2013 rent. As a result the landlord claims loss of rent for July and August, 2013 for a total amount of \$1,900.00.

### Analysis

The *Residential Tenancy Act* states that documents served by posting to the door are deemed to have been received three days after such posting. Therefore, I find that the tenant was deemed to have been served the notice to end tenancy on July 5, 2013. I also find that the notice was issued to the tenant in the correct form and contained the correct content as required by the *Act*.

Whilst the tenant did make an application within the allowable time limits to dispute the notice to end tenancy, the tenant failed to appear for the hearing to dispute the landlord's testimony and provide testimony as to why the rent was not paid. As a result, I accept the landlord's testimony that the tenant has not paid rent for the month of July, 2013 as per the notice to end tenancy and find that the landlord is entitled to an order of possession and a monetary order in the amount of \$1,900.00 relating to unpaid rent for July and August, 2013.

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, pursuant to

Section 72(1) of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$1,950.00.

As the landlord already holds a \$475.00 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 \$1,475.00.

### 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 tenant**. This order must be served on the tenant and may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,475.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant's application is dismissed without leave to re-apply.

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 06, 2013

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Residential Tenancy Branch

