



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – FF, O

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to recover the filing fee from the landlord for this application and other issues. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 04, 2013. Mail receipt numbers were provided by the landlord's agent. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The agent for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security and pet deposit?

Background and Evidence

This fixed term tenancy started on September 01, 2012. Rent for this unit is \$2,000.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$1,000.00 on July 20, 2012 and a pet deposit of \$600.00 on October 05, 2012.

The landlord's agent testifies that the tenant was served with a Two Month Notice to End Tenancy on July 25, 2013 for the landlord's use of the property. This Notice had an effective date of September 30, 2013. The tenant paid rent of \$317.67 towards the rent for August and had a credit of \$82.33 for some landscaping work done by the tenant. The tenant requested that the landlord use the security and pet deposits of \$1,600.00 to cover the balance of rent for August. The landlord's agent testifies that it was explained to the tenant in writing that the landlord is not permitted under the *Act* to use any security or pet deposits for rent as they are held in trust by the landlord until the end of the tenancy. The landlord cashed the tenants rent cheque for August however this cheque and the first cheque for \$317.67 were returned NSF. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 13, 2013 and this was served upon the tenant by posting it to the tenant's door on August 14, 2013. This Notice was deemed to have been served three days after posting. This Notice states that the tenant owes rent for August, 2013 of \$1,917.67 which included the amount of the NSF cheque. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 23, 2013. The tenant did not pay the outstanding rent and did not dispute the Notice within five days. The total amount of unpaid rent is now \$1,600.00.

The landlord's agent testifies that the tenants rent ledger shows that the tenant had outstanding NSF charges of \$25.00 for April, July, and for two cheques in August, 2013. The landlord seeks to recover \$100.0 in NSF fees.

The landlord has applied to retain the tenant's security and pet deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible. The landlords agent testifies that minutes before the hearing the tenants keys and garage opener were handed to the landlords agent. However as the landlord cannot confirm that the tenant had vacated the rental unit the landlord seeks to proceed with the Order of Possession.

The landlord has provided a copy of the tenancy agreement, a copy of the Two Month and 10 Day Notices to End Tenancy, correspondence between the parties concerning the security and pet deposits and the rent ledger in evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I tenant is not entitled to ask the landlord to use the security and pet deposits to offset against unpaid rent as these deposits are held in trust by the landlord until the end of the tenancy and must then be dealt with in accordance with s. 38 of the Act. Consequently, I find that the tenant has failed to pay all the rent for August, 2013 and the landlord is entitled to recover these rent arrears to the sum of **\$1,600.00**.

I have also considered the landlords application for NSF fees and find the tenancy agreement contains a clause which informs the tenant that the landlord will charge the tenant \$25.00 for any NSF cheques issued. The landlord has provided sufficient evidence to show that the tenant has a total amount of four NSF fees indicated as unpaid on the rent ledger and consequently I find in favour of the landlords claim to recover these fees of **\$100.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposit of **\$1,600.00** in payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,600.00
NSF fees	\$100.00
Less security and pet deposit	(-\$1,600.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$150.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on August 17, 2013 and the effective date of the notice is amended to August 27, 2013 pursuant to section 53 of the *Act*. 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. As

that date has since passed I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$150.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without 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: September 25, 2013

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Residential Tenancy Branch

