



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was originally scheduled for August 29, 2013 to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The hearing set for August 29, 2013 did not proceed due to a scheduling error on part of the Branch. The hearing was re-scheduled for today's date and the landlord was provided a Notice of Rescheduled Hearing to serve upon the tenant. The tenant did not appear at the hearing set for today's date.

The landlord testified that the Application for Dispute Resolution, the landlord's evidence and the original Notice of Hearing were served personally to the tenant on July 31, 2013. The Notice of Rescheduled Hearing was posted on the door of the rental unit on September 2, 2013.

I found the tenant has been sufficiently served with the hearing documents and I continued to hear from the landlord without the tenant present.

The landlord confirmed that the tenant still has possession of the rental unit and the landlord requires an Order of Possession. The landlord withdrew its claim for unpaid rent but did request authorization to retain the security deposit in satisfaction of the unpaid rent. I found the landlord's requests for amendment non-prejudicial to the tenant and I amended the Application for Dispute Resolution accordingly.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced February 1, 2013 and the tenant paid a security deposit of \$487.50. The tenant is required to pay rent of \$975.00 on the 1<sup>st</sup> day of every month for a one year fixed term. The tenant's automatic debit for May 2013 rent was rejected for insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on May 10, 2013 and posted it to the tenant's door that day.

The Notice indicates the tenant owed rent of \$1,000.00 as of May 1, 2013. The landlord explained this amount consists of rent of \$975.00 plus a late fee of \$25.00. The Notice has a stated effective date of May 20, 2013. The tenant did not pay the outstanding rent and did not file to dispute the Notice. Nor did the tenant vacate the rental unit.

The landlord made subsequent attempts to collect rent by way of automatic debit but those attempts were also rejected for insufficient funds. The landlord submitted that the tenant owes nearly \$5,000.00 in unpaid and/or loss of rent including the month of September 2013. However, the landlord doubts the debt will be recovered and requested authorization to retain the security deposit in satisfaction of the loss.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the tenant's ledger; the 10 Day Notice; and, Proof of Service of the 10 Day Notice.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice on the tenant's door on May 10, 2013 and it is deemed to be received by the tenant three days

later pursuant to section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to read May 23, 2013 pursuant to sections 46 and 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on May 23, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord has established that the tenant owes the landlord rent far in excess of the security deposit. Therefore, I grant the landlord's request to retain the tenant's security deposit.

As the landlord withdrew the balance of the landlord's monetary claims I do not provide a Monetary Order to the landlord with this decision.

#### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the tenant's security deposit in satisfaction of the outstanding rent.

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 11, 2013

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Residential Tenancy Branch

