



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** FF MNR MNSD OPR

## **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated August 19, 2013. The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

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

## **Background and Evidence**

The landlord submitted into evidence a copy of proof of service of the a copy of the 10-Day Notice to End Tenancy for Unpaid Rent, a copy of the tenancy agreement copies of returned cheques and copies of communications. The landlord testified that the tenancy began on August 15, 2013 with rent of \$1,200.00 and a security deposit of \$600.00 was paid.

The landlord testified that the tenant failed to pay the pro-rated rent for August in the amount of \$600.00 as the tenant's cheque was returned by the bank with the notation that the account had been closed. The landlord testified that they issued a 10-Day Notice to End Tenancy for Unpaid Rent on August 19, 2013.

The landlord testified that the tenant did not dispute the Notice, did not pay the arrears and did not vacate the rental unit.

The landlord pointed out that the tenant 's cheque for September 2013 for \$1,200.00 was ALSO returned by the bank. Copies of BOTH returned cheques were in evidence.

According to the landlord, they sent an agent to visit the tenant in person to discuss the payment of rent arrears. The landlord testified that the tenant was verbally abusive and ordered them off the property. Both parties testified that police were called by the tenant.

The tenant acknowledged that they did not file an application for dispute resolution to dispute the 10-Day Notice.

With respect to the returned cheques, the tenant testified that she was not aware that the account had been closed.

The tenant argued that once it was discovered that the cheques did not clear, they tried to pay the rent in cash more than once but the landlord refused to accept payment. The tenant did not provide the actual dates that their attempts occurred and it was not clear whether the tenant was alleging that they tried to pay the rent within 5 days of receiving the 10-Day Notice to End Tenancy for Unpaid Rent on August 19, 2013 or whether they tried to make the cash payments beyond the five-day deadline.

In any case, there is a letter in evidence addressed to the landlord and written by the tenant, dated September 4, 2013, in which the tenant states that they will move out on October 1, 2013. The tenant also stated in this letter that the family has been undergoing hardship and pointed out that they tried to pay in cash but the payment was rejected.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due as evidenced by the tenant's returned cheque for the first month rent of \$600.00 for August 2013.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy through a Ten-Day Notice effective not earlier than 10 days after the date the tenant receives it. I find that the landlord issued the Notice on August 19, 2013.

This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. I find that the tenant had until August 24, 2013 to either pay the rent owed or dispute the Notice. I find that the tenant did not pay the rent owed for August within 5 days of receiving the 10-Day Notice to End Tenancy and in fact failed to pay \$1,200.00 rent due on September 1, 2013, as evidenced by the returned cheque dated September 1, 2013.

I find that the tenant also did not dispute the 10-Day Notice within the required 5 days. The Notice included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not accepted by the tenant.

With respect to the tenant's claim that their attempts to pay the rental arrears in cash were rebuffed by the landlord, I find that, given the fact that the landlord clearly attempted to cash the tenant's cheques, it is unlikely that the landlord purposely refused to accept their rent in cash. I find that, if the landlord's motive was to avoid payment, then they would not have bothered to try and cash the tenant's cheques at all. It is evident that the landlord was trying, without success, to be paid the rent that was owed.

In addition to the above, I find that the tenant failed to keep her written promise to vacate the rental unit by October 1, 2013.

In this instance I find that the tenant was in arrears at the time the Notice was served on August 19, 2013 and the tenant did not pay the arrears. I find that the tenant, in fact continued to withhold her rent for September and October 2013.

Section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Given the above, I find that the landlord is entitled to an Order of Possession.

I further find that the landlord has established total monetary entitlement for \$3,050.00, comprised of \$600.00 pro-rated rent for August 2013, \$1,200.00 rent for September 2013, \$1,200.00 rent for October 2013 and the \$50.00 fee paid for this application. I order that the landlord retain the tenant's \$600.00 security deposit in partial satisfaction of the claim, leaving a balance of \$2,450.00 in favour of the landlord.

I hereby issue an Order of Possession in favour of the landlord effective two days on service. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 for \$2,450.00. 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.

### **Conclusion**

The landlord is successful in the application and is granted an Order of Possession and a monetary order.

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: October 08, 2013

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Residential Tenancy Branch