



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with a landlord's Application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on September 22, 2013 at the rental unit. The landlord confirmed that the tenant continues to reside at the rental unit. The landlord provided a registered mail tracking number as proof of service and testified that a search of the registered mail tracking number shows that the registered mail was successfully delivered on September 24, 2013. I was satisfied the tenant was served with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

### Preliminary and Procedural Matters

During the hearing, the landlord orally requested the monetary claim be amended to reflect two partial payments received from the tenant and a hydro bill sent to the tenant subsequent to the landlord filing this Application for Dispute Resolution. As the net effect of the amendment was a reduction to the monetary claim I permitted the landlord's request for amendment.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for the amounts claimed, as amended?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one-year fixed term tenancy commenced on March 1, 2013 and the tenant paid a security deposit of \$750.00. The tenant is required to pay rent of \$1,590.00 on the 1<sup>st</sup> day of every month. The tenant is also required to pay 60% of utilities.

On September 10, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) on the door of the rental unit, in the presence of a witness. The Notice indicates rent of \$3,830.00 was outstanding and \$745.12 in utilities was outstanding. The landlord provided a copy of a ledger for rent and a separate ledger for utilities in support of the above amounts.

The tenant did not file to dispute the Notice and did not pay the outstanding rent or utilities as of September 19, 2013, the date the landlord filed this Application. In filing this Application for Dispute Resolution the landlord requested compensation of \$6,165.00. This amount is the sum of the outstanding rent and utilities as indicated on the 10 Day Notice and loss of rent for the month of October 2013.

During the hearing, the landlord testified that since filing this Application for Dispute Resolution the following transactions were recorded: the tenant paid \$535.00 on September 27, 2013 and \$250.00 on October 28, 2013; and, the landlord sent the tenant an invoice for hydro in the amount of \$230.02. The landlord seeks to amend the monetary claim to reflect these more recent transactions.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. A tenant is also required to pay utilities to a landlord within 30 days of receiving a request for payment of utilities. Where a tenant does not pay rent and/or utilities when due the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent and/or utilities 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 and utilities or file to 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 to End Tenancy on the door of the rental unit on September 10, 2013. Upon review of the 10

Day Notice submitted as evidence I note the stated effective date reads September 10, 2013, which is incorrect. Pursuant to section 53 of the Act, an effective date automatically changes to comply with the Act. Therefore, taking into account the landlord posted the 10 Day Notice, the effective date automatically changed to read September 23, 2013 pursuant to sections 46, 53 and 90 of the Act.

Since the tenant did not pay the outstanding rent and utilities or file to dispute the Notice within five days of receiving the Notice I find the tenancy ended on September 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 entitled to recover unpaid rent in the amount indicated on the Notice plus loss of rent for the month of October 2013 since the tenant continued to occupy the rental unit in October 2013. I am further satisfied the landlord is entitled to recover the utilities claimed against the tenant, as amended, less the two partial payments received since the landlord filed this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: as per 10 Day Notice and ledger	\$ 3,830.00
Loss of Rent: October 2013	1,590.00
Unpaid Utilities: \$745.12 + \$230.02	975.14
Less: partial payments (\$535.00 + \$250.00)	(785.00)
Filing fee	100.00
Less: security deposit	<u>(750.00)</u>
Monetary Order	\$ 4,960.14

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's

security deposit and has been provided a Monetary Order for the balance of \$4,960.14 to serve and enforce as necessary.

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 29, 2013

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Residential Tenancy Branch

