



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Ten-Day Notice to End Tenancy dated August 21, 2013. In addition, the landlord was seeking a monetary order for rental arrears.

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.

### **Preliminary Matter: Service of the Hearing Package and Evidence**

The tenant confirmed that he received the landlord's application for dispute resolution but indicated that there was no copy of the 10-Day Notice to End Tenancy for Unpaid Rent included as evidence with the package. The tenant testified that they had never received a 10-Day Notice to End Tenancy for Unpaid Rent dated August 21, 2013.

The landlord stated that the document in question was served and that a copy of this 10-Day Notice to End Tenancy for Unpaid Rent was included, along with the Notice of Hearing, in the package served on the tenant.

I find that the landlord did submit a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated August 21, 2013, with the application at the time it was filed at Residential Tenancy Branch.

I accept that the tenant did receive the Notice of Hearing, as the tenant is in attendance at the hearing today. In regard to the evidence, I find on a balance of probabilities that a

copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated August 21, 2013 was also included in the hearing package served on the tenant.

**Issue(s) to be Decided**

Is the landlord is entitled to an Order of Possession based on the Ten-Day Notice?

Is the landlord is entitled to monetary compensation for unpaid rent?

**Background and Evidence**

The tenancy began in September 2011 with rent of \$2,500.00 per month and a security deposit of \$1,250.00 was paid.

The landlord testified that the tenant failed to pay \$2,500.00 rent for each month including July, August, September, October and November 2013. The landlord is seeking monetary compensation for the rental arrears owed.

The landlord testified that he served the tenant with a 10-Day Notice to End Tenancy for Unpaid Rent on August 21, 2013 by posting it on the tenant's door. The landlord submitted into evidence a copy of the 10-Day dated August 21, 2013 and stated that he is seeking an Order of Possession based on this Notice.

The tenant testified there was a previous hearing held on October 9, 2013, on the tenant's application, in which the tenant had already successfully disputed the August 21, 2013, 10-Day Notice to End Tenancy for Unpaid Rent . The tenant provided the file number of the previous hearing.

The tenant's testimony that this notice was already set aside was confirmed by reading the dispute resolution decision dated October 9, 2013, issued on the tenant's application. The arbitrator made the following determination:

*"As there is no Notice before me and the dates and substance of that notice is in dispute, I set aside any notice issued by the landlord to the tenant up until the date the tenant filed for dispute resolution; August 29, 2013."*

**Analysis**

**Order of Possession**

The tenant's position is that the August 21, 2013 Notice has already been set aside and that I therefore lack jurisdiction to consider this Notice.

I find that the tenant is correct and the 10-Day Notice issued August 21, 2013 was permanently cancelled at a previous hearing on the tenant's application and therefore is of no force nor effect. Given the above, I find that I have no authority to consider or enforce the August 21, 2013 Notice.

I find that the landlord is not entitled to terminate this tenancy based on a Notice that has already been dealt with and was cancelled at a previous hearing. The arbitrator overseeing the October 9, 2013 decision also states, "*Any notices issued after that date will need to be dealt with in a separate hearing*".

Accordingly, I dismiss the portion of the landlord's application relating to the request for an Order of Possession.

### Monetary Claim

In regard to the landlord's monetary claim for rental arrears, I find that the monetary claim by the landlord has not been dealt with at any prior hearings.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
  - (i) are required or prohibited under this Act, or
  - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

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.

In regard to an Applicant's right to claim monetary compensation from the other party, I find that section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

According to the Residential Tenancy Guidelines:

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for arbitration for an order that the other party comply with the tenancy agreement or the Act that governs the agreement.

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages.

In this instance, I accept the landlord's testimony that the landlord met their obligation under the Act and agreement by providing the residential premises as agreed to. I find that tenant failed to comply with the Act by failing to pay rent owed under the tenancy agreement when it was due.

I find that the landlord is therefore entitled to total monetary compensation for unpaid rent in the amount of \$12,550.00, comprised of \$2,500.00 rent owed for July 2013, \$2,500.00 rent for August 2013, \$2,500.00 rent for September 2013, \$2,500.00 rent owed for October 2013, \$2,450.00 rent owed for November 2013 and the \$100.00 cost of the application.

The tenant's rent for November 2013 had been reduced by the arbitrator presiding over the hearing held on October 9, 2013, in which the tenant was granted a \$50.00 abatement from his November 2013 rent to reimburse the tenant for the cost of the tenant's application.

Based on the above and pursuant to section 7 and 67 of the Act, I hereby grant the landlord a monetary order for rental arrears and the cost of this application in the amount of \$12,550.00. This Order must be served on the tenant and, if unpaid, may be enforced through an order from Small Claims Court.

The landlord's request for an Order of Possession is dismissed.

**Conclusion**

The landlord is partially successful in the application and is granted a monetary order for rent owed. The landlord's application seeking An Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent is dismissed as the Notice was previously cancelled.

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: November 28, 2013

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Residential Tenancy Branch

