



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNR, MNSD, OPR, MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated June 20, 2012 and a monetary order for rental arrears. The landlord was also claiming future loss of rent for August in the amount of \$1,250.00 and \$250.00 for outstanding utilities.

Despite being served by registered mail sent on October 29, 2013 and confirmed as received by Canada Post Tracking information, and being served by registered mail on November 2, 2013 as well as in person with the amended application, the respondent tenant did not appear.

### **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 entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to utility charges?

Is the landlord entitled to compensation for damages?

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 20, 2013 with effective date of October 30, 2013, a copy of the tenancy agreement showing that utilities are not included in rent, copies of municipal utility bills, copies of invoices and letters from contractors, copies of communications, proof of service and a monetary worksheet detailing the landlord's claims. No evidence was submitted by the tenant.

The landlord testified that the tenancy began on August 1, 2013 with rent of \$1,400.00 per month and a security deposit of \$700.00 was paid. The landlord testified that the tenant did not pay \$1,400.00 for October 2013. A 10-Day Notice to End Tenancy for

Unpaid Rent was issued and served on the tenant. The landlord testified that the tenant failed to pay the arrears, did not dispute the Notice and did not vacate the unit.

The landlord testified that the tenant failed to pay \$1,400.00 for November, \$1,400.00 for December 2013, water utility bills of \$129.42 and \$148.70 supported by evidence. The total amount for rent and utilities is \$4,478.12, which is being claimed.

The landlord also claims the cost of fuel of \$97.67 for driving to and from the rental unit.

With respect to the landlord's claim for damage to the rental unit, the landlord testified the furnace was fully serviced and inspected early in October 2013, and left in good working order. However, the landlord was contacted about a furnace emergency on October 11, 2013 and the contractor found a broken valve that compromised the use of the furnace and this required a complete replacement. The landlord testified that they strongly suspect the tenant had tampered with the furnace and the landlord is claiming reimbursement for the cost of \$3,505.83.

### **Analysis**

In regard to the \$4,200.00 in rental arrears claimed by the landlord, I find that section 26 of the Act states rent must be paid when it is due, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

Through testimony from the landlord it has been established that the tenant did not pay the rent when it was due. When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. 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.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent on October 20, 2013. The tenant has not paid the arrears and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is clearly entitled to an Order of Possession.

I also find that the landlord is entitled to a monetary order for rental arrears totalling \$4,200.00 for rent owed for October, November and December 2013.

With respect to the landlord's claim for water utilities, I find that there is an enforceable term in the tenancy agreement placing responsibility on the tenant to pay his own

utilities. Accordingly, I find that the landlord is entitled to be reimbursed \$278.12 including \$129.42 and \$148.70 for water utility bills received to date.

With respect to the landlord's claims for damages including cost of fuel and a replacement furnace, I find that an applicant's right to claim damages from another party is dealt with under section 7 of the Act which provides that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the landlord's claim for fuel used to attend the rental site does not satisfy element 2 of the test for damages. I find that the cost of travel to and from the landlord's business would be considered an overhead cost.

In regard to a furnace replacement, I find under the Act, that repairs or maintenance of furnaces, appliances and other infrastructural systems are the landlord's responsibility. In addition, section 37 and 32 of the Act provide that a tenant is not responsible to compensate the landlord for items that are subject to normal wear and tear.

Wilful vandalism to the furnace, if proven to have been committed by the tenant, may meet the test for damages. However, I find that the landlord has not sufficiently proven that the furnace was sabotaged by the tenant.

In any case, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Items and finishes have a limited useful life and this is recognized in Residential Tenancy Policy Guideline number 40 which lists the estimated useful life of interior and exterior finishes, items and fixtures. Given the above, I find that the portion of the landlord's application seeking damages must be dismissed.

I find that the landlord has established a total monetary claim of \$4,578.12, comprised of \$4,200 for rental arrears, \$278.12 for water utilities and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$700.00 in partial satisfaction of the claim leaving a balance due of \$3,878.12.

### **Conclusion**

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 is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$3,878.12. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's monetary claim is dismissed without leave.

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: December 10, 2013

---

Residential Tenancy Branch

