



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR, MNR

### **Introduction**

This is the Landlord's Application for Dispute Resolution for an Order of Possession; a Monetary Order for unpaid rent and loss of revenue; to apply the security deposit towards partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent testified that both of the Tenants were served with the Notice of Hearing documents and documentary evidence by registered mail, sent October 23, 2013. The Landlord provided the receipts and tracking numbers in evidence. The Tenant MH stated that the Tenant RK had moved out of the rental unit "two weeks ago". Section 90 of the Act deems documents served by mail to be received 5 days after mailing the documents. Based on the testimony of both parties, I find that both parties were duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

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

Is the Landlord entitled to an Order of Possession; a Monetary Order for unpaid rent and loss of revenue?

May the Landlord apply the security deposit in partial satisfaction of her monetary award?

### **Background and Evidence**

A copy of a residential tenancy agreement was provided in evidence. The tenancy agreement was signed by the Tenant MH July 1, 2011. Monthly rent is \$700.00, due on the first day of the month. The Tenant paid a security deposit in the amount of \$350.00 at the beginning of the tenancy.

A copy of the Notice to End Tenancy was provided in evidence. The Notice is dated October 11, 2013, with an effective end of tenancy date of October 21, 2013 for \$805.00 in unpaid rent. The Landlord's agent served the Tenant MH with the Notice on October 11, 2013, at 18:13 by handing the document to the Tenant at the rental unit.

The Tenant MH testified that he is withholding rent because the Landlord refuses to exterminate bed bugs in the rental unit until rent is paid in full. He stated that he has done repairs to his bathroom ceiling caused by flooding from the apartment directly overhead and that the Landlord has not reimbursed him for his work.

The Landlord disputed MH's testimony. The Landlord stated that the Tenant owes \$105.00 for September, \$700.00 for the month of October and loss of revenue for the months of November and December, 2013.

The Tenant did not provide any invoices or receipts in evidence for the cost of repairing the ceiling and stated that he has not provided any proof of the cost of repairs to the Landlord.

The Tenants did not apply to dispute the Notice to End Tenancy within five days from the date of service.

### **Analysis**

The tenancy agreement provided was not signed by the Tenant RK. I find that the Landlord provided insufficient evidence that RK was the Landlord's tenant, and therefore the Landlord's application against RK is dismissed without leave to reapply.

I have reviewed all documentary evidence and accept that the Tenant MH was served with the Notice to End Tenancy on October 11, 2013.

I accept the evidence of both parties that MH failed to pay the rent owed in full within the 5 days granted under Section 46 (4) of the Act. Section 26 of the Act requires a tenant to pay rent when it is due whether or not the Landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right under the Act to withhold rent. I find that the Tenant MH had no right under the Act to withhold rent.

I find that the Tenant MH is conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on October 21, 2013.

Therefore, I find that the Landlord is entitled to an Order of Possession. I grant the Landlord's application for unpaid rent in the amount of **\$805.00** and loss of revenue for the month of November in the amount of **\$700.00**. I find that the Landlord's application for loss of revenue for the month of December, 2013, is premature as the Landlord may be able to re-rent the rental unit for part of December. Therefore, this portion of the Landlord's application is **dismissed with leave to reapply**.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of her monetary award. No interest has accrued on the security deposit.

The Landlord has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant MH.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent and loss of revenue	\$1,505.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,555.00
Less security deposit	- \$350.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$1,205.00</b>

### **Conclusion**

The Landlord's application against the Tenant RK is **dismissed without leave to reapply**.

The Landlord's application for loss of revenue for the month of December, 2013 is **dismissed with leave to reapply**.

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$1,205.00** for service upon the Tenant MH. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 03, 2013

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Residential Tenancy Branch

