



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit on November 21, 2013. The landlord testified that the registered mail was successfully delivered on November 22, 2013. I was satisfied the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested the application be amended to include unpaid and/or loss of rent for the months of December 2013 and January 2014 since the tenant continues to reside at the rental unit. The landlord also requested the application be amended to authorize the landlord to retain the security deposit in partial satisfaction of unpaid rent. Based upon the circumstances presented to me I found the request non-prejudicial to the tenant and have considered the amendments in making this decision.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to recover unpaid and/or loss of rent for the months of November 2013 through January 2014?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced in June 2013 and the landlord collected a security deposit of \$437.50. The tenant is required to pay rent of \$875.00 on the 1<sup>st</sup> day of every month. For the month of November 2013 the rent received on behalf of the tenant from income assistance was short by \$180.00. The landlord personally served the tenant with a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) on November 12, 2013. The Notice indicates rent of \$180.00 was outstanding, plus a late fee, and has a stated

effective date of November 22, 2013. The tenant did not pay the outstanding rent or file to dispute the 10 day Notice.

The landlord testified that the tenant and other persons continue to occupy the rental unit. The landlord has received \$715.00 from income assistance for the months of December 2013 and January 2014.

The landlord requests an Order of Possession effective as soon as possible as well as a Monetary Order for the unpaid rent and late fees.

Documentary evidence provided for this proceeding consisted of: the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; and, the registered mail receipt.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent 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 or 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 find the tenant received a 10 Day Notice on November 12, 2013 as evidence by the Proof of Service signed by the tenant acknowledging receipt of the Notice. Since the tenant did not pay the outstanding rent or file to dispute the Notice, I find the tenancy ended on November 22, 2013 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Since the tenant has continued to occupy the rental unit as of this date, I find the landlord entitled to recover unpaid and/or loss of rent for the months of November 2013 through January 2014 in the sum of \$540.00 (\$180.00 x 3 months).

In order to collect late fees the written tenancy agreement must contain such a provision that complies with the Residential Tenancy Regulations. In the absence of a written tenancy agreement the landlord did not establish an entitlement to collect late fees and I dismiss this portion of the landlord's claim.

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 filing fee paid for this application.

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

Unpaid and/or Loss of Rent (Nov 2013 – Jan 2014)	\$ 540.00
Filing fee	50.00
Less: security deposit	<u>(437.50)</u>
Monetary Order	\$ 152.50

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 \$152.50 to serve upon the tenant.

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: January 14, 2014

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Residential Tenancy Branch

