



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

## **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent dated September 11, 2013, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

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.

At the outset of the hearing, the landlord stated that they are no longer seeking an Order of Possession as the tenant vacated the unit sometime before October 6, 2013. The landlord still seeks a monetary order for the rent owed for September 2013 and for loss of rent for the month of October 2013.

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

Is the landlord entitled to monetary compensation for rental arrears?

## **Background and Evidence**

The landlord testified that the tenancy began in May 2013, at which time the tenant paid a security deposit of \$435.00. The landlord testified that when the tenant failed to pay \$875.00 rent due on September 1, 2013, a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served to the tenant on September 11, 2013.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy, and a copy of the tenancy agreement.

The landlord testified that, because of hostility from the tenant and the condition of the unit, she did not feel comfortable showing the rental unit to prospective tenants during the month of September 2013. The landlord testified that she also did not know whether or not the tenant could comply with the Notice and vacate the unit. The landlord testified that she did not confirm that the unit was vacant until October 6, 2013 and the landlord did not succeed in re-renting the suite during the month of October and it was left vacant. The landlord testified that attempts were made to find a new tenant by advertising the unit starting after October 6, 2013.

The landlord is therefore also claiming \$875.00 loss of revenue for October 2013. The total claim is for \$1,750.00 plus the \$50.00 cost of the application.

The tenant disputed that they prevented the landlord from showing the unit to new tenants. The tenant testified that they merely felt it necessary that they be home when the landlord accessed the unit due to past experiences they had in the tenancy. The tenant testified that they accepted the 10-Day Notice to End Tenancy for Unpaid Rent and moved out in accordance with the Notice. The tenant does not believe they should be held accountable to compensate the landlord for loss of revenue for October 2013.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice.

I find that the landlord has established entitlement to be reimbursed for rental arrears of \$875.00 for the month of September 2013.

In regard to the landlord's claim for loss of revenue for the month of October, I find that section 7 f the Act states that, if a landlord or tenant does not comply with the Act, 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. In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

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, and

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In regard to the claim for loss of revenue I find that the landlord did lose revenue for the month of October 2013. However, I accept the tenant's testimony that they vacated the rental unit at the end of September 2013 and did not over hold into the month of October.

I am also not satisfied that the landlord put the tenant on notice that, if the tenant accepted the termination and vacated the unit in accordance with the Ten Day Notice to End Tenancy for Unpaid Rent, damages would still be sought for loss of revenue. For the reasons above, I find that the portion of the landlord's application seeking monetary compensation for loss of revenue for October 2013 must be dismissed.

Based on the evidence, I find that the landlord is entitled to total monetary compensation of \$925.00., comprised of rental arrears of \$875.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$435.00 in partial satisfaction of the claim leaving a balance due of \$490.00.

I hereby grant the Landlord an order, under section 67 of the Act, for \$490.00. 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 application is dismissed without leave.

### **Conclusion**

The landlord is successful in the application and is granted a monetary order for rental arrears. The request for the order of possession is found to be moot, as the tenant vacated prior to the hearing and the landlord's request for compensation for loss of revenue for October is dismissed.

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 15, 2014

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Residential Tenancy Branch

