



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, RP, ERP, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order directing the landlord to carry out repairs and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the landlord diligent about carrying out regular maintenance of the rental unit?

### **Background and Evidence**

The tenancy started on August 01, 2013 for a fixed term of one year. The rent is \$960.00 per month due on the first day of each month.

The landlord stated that the tenant failed to pay rent for December 2013 and on December 02, 2013; the landlord served the tenant with a notice to end tenancy for non payment of rent. The tenant agreed that he owed rent for December in the amount of \$960.00.

The tenant stated that the refrigerator did not work well and as a result he was forced to throw away his food, a few times. The testimony of both parties was contradictory with regard to the dates that the landlord was informed about the refrigerator and the date that the landlord visited the rental unit to check it out. Both parties agreed that at the time of the hearing the refrigerator had been replaced and was in good working condition.

The tenant also stated that the dishwasher was problematic and despite his complaints, the landlord did not act in a timely manner. The tenant agreed that at the time of the hearing, the dishwasher had been replaced, but added that the replacement did not work well. The landlord stated that the dishwasher was not included in the lease and filed a copy of the lease to support his testimony. The tenant referred to the move in condition report which states that the dishwasher is not working.

### **Analysis**

#### **Landlord's Application:**

The tenant received the notice to end tenancy for unpaid rent, on December 02, 2013 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. The landlord agreed to allow the tenancy to continue until February 28, 2014. Pursuant to section 55(2) I am issuing a formal order of possession effective this date. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. As agreed to by the tenant, I find that the tenant owes \$960.00 for rent for December 2014. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00 for a total entitlement of \$1,010.00.

#### **Tenant's Application:**

The tenant made an application for an order directing the landlord to repair the refrigerator and the dishwasher. The tenant agreed that at the time of the hearing, that the refrigerator was replaced and worked well.

The move in inspection report referred to the presence of an inoperative dishwasher. However this does not automatically mean that the dishwasher was included in the lease. Based on the tenancy agreement, I find that the dishwasher was not included in the rent and therefore I am not able to order the landlord to repair the dishwasher.

I accept the tenant's testimony that the refrigerator was problematic. The landlord was not sure of when he was informed about the problem and was also not sure of the date he visited the rental unit to address the problem.

Accordingly, I find on a balance of probabilities that it is possible that the tenant made this application to spur the landlord into action. Therefore I award the tenant the recovery of the filing fee.

The landlord has established a claim of \$1,010.00 and the tenant has established a claim of \$50.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$960.00 which consists of the difference between the established entitlements of both parties.

### **Conclusion**

I grant the landlord an order of possession effective on or before **1:00 pm on February 28, 2014**. I also grant the landlord a monetary order in the amount of **\$960.00**.

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 29, 2014

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Residential Tenancy Branch