



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

*OPR, MNR, CNR, OPC, CNC, OLC, MNR, MNDC, 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 pursuant to Section 55 and a monetary order for rent owed, pursuant to Section 67 based on a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord was also seeking an Order of Possession for Cause.

The tenant applied for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause and an order to force the landlord to comply with the Act..

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, it was determined that the portions of the applications dealing with the landlord's request for an Order of Possession and the tenant's request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent and the One Month Notice to End Tenancy for Cause, are now moot and need not be heard or determined, as the tenant has agreed to vacate the rental unit.

The hearing will proceed with respect to the landlord's monetary claims.

### **Issues to be Decided**

- Has the Landlord established monetary entitlement to compensation for rent still outstanding?

### **Background and Evidence**

Based on the testimony of both parties, I find that the tenancy started in October 2013 with rent set at \$950.00 and a security deposit of \$450.00 was paid.

The landlord testified that the tenant was in arrears for rent in the amount of \$900.00 for January 2014. Submitted into evidence was a copy of a Ten Day Notice to End Tenancy for Unpaid Rent showing the tenants owe \$900.00 for rent. The landlord did not submit a tenant ledger showing the history of the tenant's rental account. However the landlord submitted copies of receipts for payments made by the tenants. The landlord's receipts show that, between September 2013 and f December 1, 2013, the tenants had paid a total of \$3,950.00. I note that several of these receipts had the notation, "*security deposit*" written on them.

The landlord is claiming monetary compensation totaling \$1,142.70, including \$900.00 allegedly owed for the month of January 2014, gas utilities of \$65.30 and hydro arrears of \$177.40.

The tenant testified that they had paid their rent in increments, but that these were paid in advance of the due dates. The tenants submitted receipts for payments made between September 2013 and December 1, 2013 totaling \$4,400.00. According to the tenants, they are not in arrears, but have actually overpaid their rent.

### **Analysis**

With respect to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement.

In reviewing the data provided by both parties, I find that, even if I accept the landlord's payment figures, the tenants were not in arrears for the stated \$900.00 for January 2014 rent. In fact, I find that, based on the landlord's evidence alone, the tenants paid the landlord \$3,950.00 in total. After deducting the \$450.00 towards the security deposit I find that the payments still total \$3,500.00 which was paid over the 4 month period including, October 2013, November 2013, December 2013 and January 2014. Even using the landlord's data, the tenants were only \$100.00 in arrears for rent for January 2014.

Using the tenant's receipt data, I find that the tenants verified payments to the landlord totalling \$4,400.00. After deducting the \$450.00 towards the security deposit, I find that \$3,950.00 was paid toward rent over the 4-month tenancy. I find that the tenant's rental account was overpaid, as of January 2, 2014, in the amount of \$350.00.

Given that the landlord neglected to keep even the most basic financial ledger to track the tenant's rental account, choosing instead to rely on copies of receipts, and, in light of the fact that the landlord has miscalculated their own figures, I prefer the evidence of the tenants.

I find that the tenants are not in arrears for any rent. I find that as of January 2, 2014, the landlord had collected excess rent of \$350.00 from the tenants and this must be refunded. For this reason I find that the landlord's claim for monetary compensation must be dismissed.

In regard to the landlord's claims for utilities, I find that the tenancy agreement shows that water, cable vision and wifi are included in the \$900.00 rent and that the tenants agreed to pay 40% of the other utilities.

However, I make no findings with respect to whether or not the tenants are in arrears for utilities as I find I cannot rely on the landlord's deficient financial records. For this reason I find that the landlord's claim for reimbursement of utility arrears must also be dismissed.

### **Conclusion**

The landlord is not successful in their application because the claims for rental and utility arrears have not been sufficiently proven. Therefore, the landlord's application is dismissed in its entirety without leave to reapply. The tenant's cross application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and the One-Month Notice to End Tenancy for Cause is moot as the tenants are vacating the rental unit.

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 22, 2014

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Residential Tenancy Branch

