



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kelson Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes For the tenant – CNC, CNR, OLC, RP, LRE  
For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent, to cancel a Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for the landlord to make repairs to the unit, site or property; and to suspend or set conditions on the landlord's right to enter the property. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. Consequently the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 06, 2014. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Two agents for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

The landlord's agents testify that this tenancy started on April 01, 2004. Rent for this unit started at \$540.00 per month and increased to \$612.00 per month and then finally \$625.00 per month on February 01, 2014. The tenant also paid \$10.00 a month for

laundry. Rent is due on the first day of each month. The tenant paid a security deposit of \$270.00 on March 23, 2004.

The landlord's agent testifies that the tenant failed to pay all the rent owed for December, 2013 leaving an unpaid balance of \$190.00. The tenant failed to pay rent for January, 2014 of \$622.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 17, 2014 and this was served upon the tenant by posting it to the tenant's door on this date. This Notice was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 27, 2014. The tenant did not pay the outstanding rent and although the tenant did file an application to dispute the Notice the tenant has not appeared at the hearing today. Since the 10 Day Notice was issued to the tenant the tenant has also failed to pay rent for February, 2014 of \$625.00. The total amount of unpaid rent is now \$1,437.00. The landlord's agent refers to their documentary evidence in the form of the rent ledger which shows the tenants rent payments and arrears.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears and a Monetary Order for the balance plus the filing fee. The landlord has also applied for an Order of Possession to take effect on February 28, 2014.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy, and the rent ledger in evidence.

#### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

*Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the evidence before me that the tenant has rent arrears of **\$1,437.00**. Consequently, I find that the landlord is entitled to recover these rent arrears pursuant to s. 26 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$270.00** plus accrued interest of **\$9.56** in partial payment of the payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,437.00
Less security and pet deposit	(-\$279.56)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$1,207.44</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on January 20, 2014 and the effective date of the notice is amended to January 30, 2014 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As that date has since passed I grant the landlord an order of possession pursuant to s. 55 of the *Act* as requested by the landlord's agent for February 28, 2014.

#### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,207.44**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on February 28, 2014**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: February 25, 2014

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Residential Tenancy Branch

