



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:13 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord gave sworn testimony and written evidence that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on January 8, 2014. The landlord entered into written evidence a copy of a Proof of Service document initialled by the tenant and witnessed by his daughter attesting to the landlord's service of the 10 Day Notice to the tenant at 7:34 p.m. on January 8, 2014. The landlord said that he sent the tenant a copy of his dispute resolution hearing package by registered mail on January 17, 2014. The landlord entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. I am satisfied that the landlord served these documents to the tenant in accordance with sections 88, 89 and 90 of the *Act*.

At the hearing, the landlord testified that he believed that the tenant has vacated the rental unit in advance of this hearing. He said that the belongings left behind in the rental unit by the tenant appear to be garbage and debris that the tenant no longer wishes to retain.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy began on December 15, 2013 on the basis of an oral agreement between the parties. Monthly rent is set at \$620.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid on December 15, 2013.

The landlord entered into written evidence only the first page of the two-page 10 Day Notice. The landlord identified \$620.00 in unpaid rent owing as of January 1, 2014 in the 10 Day Notice. He testified that the tenant paid \$100.00 of his rent on January 4, 2014. The landlord testified that the tenant has not paid anything further to the landlord.

The landlord's application asked for the issuance of a monetary award of \$520.00 for unpaid rent owing from January 2014.

### Analysis

The landlord issued the 10 Day Notice pursuant to section 46(1) of the *Act*. Section 46(2) of the *Act* requires that "A notice under this section must comply with section 52 [form and content of notice to end tenancy]." Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form...*

In this case, the landlord has not provided proof that he provided both pages of the 10 Day Notice to the tenant. More importantly, the landlord failed to identify any effective date that this tenancy was to end. Although section 53 of the *Act* gives me broad powers to revise an incorrect date on a notice to end tenancy, it does not enable me to insert a missing effective date from a notice. As such, I find that the landlord's application for an Order of Possession cannot be approved as the landlord has not complied with the requirements of section 52(c) of the *Act*.

While I am dismissing the landlord's application for an Order of Possession, I advised the landlord at the hearing of the process whereby he can confirm his understanding that the tenant has abandoned the rental unit. To do so, he will need to post a written 24-hour inspection notice on the tenant's door advising of his intent to inspect the rental unit for the purpose of determining whether the tenant is still residing at these premises. If the landlord concludes from his inspection that the tenant is no longer residing there, he can take possession of the rental unit at that time and change the locks. The landlord is required to store anything of value left behind by the tenant in accordance with the *Act* and related legislation. The landlord can consult with the Residential Tenancy Branch if he needs further information regarding his obligations as a landlord regarding any belongings of value left behind by the tenant if this tenancy has ended.

Based on the landlord's undisputed sworn testimony, I find that the landlord is entitled to a monetary award of \$520.00, the amount requested in his application for unpaid rent owing from January 2014. I also allow the landlord to recover his \$50.00 filing fee from the tenant.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent owing from January 2014 and his filing fee and to retain the security deposit:

<b>Item</b>	<b>Amount</b>
Rent Owing from January 2014 (\$620.00 - \$100.00 = \$520.00)	\$520.00
Less Security Deposit	-300.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$270.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of January 8, 2014, 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 05, 2014

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Residential Tenancy Branch

