



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wendeb Properties Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### 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; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) that the landlord's agent (the agent) testified she posted on his door on December 12, 2013. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the agent by registered mail on January 17, 2014. I find that the landlord has served these documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, I asked the agent if she had entered any written evidence as I had not been provided anything from the landlord. The agent testified that she sent some faxed written evidence to the Residential Tenancy Branch (the RTB) the day before this hearing. The agent said that she had not served a copy of her written evidence to the tenant, although she knew that he had received some of this information in the past as he had confirmed that he had received the 10 Day Notice. I advised the parties that I could not consider the landlord's written evidence as it had not been served to the tenant.

### 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?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy on May 1, 2011. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Although the parties confirmed that the original Residential Tenancy Agreement (the Agreement) called for a

monthly rent of \$800.00, the landlord had agreed to a reduction of the monthly rent to \$700.00 over the latter part of this tenancy. Monthly rent for those portions of this tenancy relevant to the landlord's application is \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit and \$200.00 pet damage deposit, both paid on April 12, 2011.

The agent gave undisputed sworn testimony that the 10 Day Notice, a copy of which was not before me at the time of this hearing, identified \$1,750.00 in rent owing as of the December 12, 2013 date of the issuance of that Notice. The effective date for the 10 Day Notice was December 26, 2013.

The landlord applied for a monetary award of \$1,625.00. The agent testified that the current amount owing was \$1,750.00.

The tenant testified that he has made numerous payments to the agent for this tenancy since the 10 Day Notice was issued. He said that he is trying to catch up with his outstanding rent payments but has been unable to do so in full as yet.

I noted that the only written evidence I had from the landlord was the statement included in the Details of the Dispute section of the landlord's application for review that there was unpaid rent for 2 ½ months and that the tenant had "bounced multiple rent cheques." I asked the agent to clarify the amounts identified as owing in the 10 Day Notice, the landlord's application for a monetary award of \$1,625.00, and the \$1,750.00 amount the agent claimed was still owing at the time of this hearing.

The agent initially gave sworn testimony that the amount identified as owing in the 10 Day Notice covered the three months from October 2013 until December 2013. As the rent owing for three months of rent for this tenancy would total \$2,100.00, I asked the agent to clarify her testimony. She testified that the amounts owing were \$350.00 for one half of October 2013, and \$700.00 for each of November and December 2013.

The agent testified that the tenant made an \$800.00 payment by cheque on December 1 or 2, 2013. However, this cheque was returned as NSF. She said that the tenant made another payment of \$100.00 before December 12, 2013. She testified that the tenant made an \$825.00 payment towards the amount owing for this tenancy by cheque by January 5, 2013. This cheque was negotiable. She testified that the tenant made another payment of \$750.00 by cheque sometime in January 2014. Near the end of January 2014, the agent received another cheque for \$300.00 from the tenant. This cheque was returned as NSF. A few days before this hearing, the agent received a

\$350.00 cash payment from the tenant. The agent testified that she has not provided any receipts for any of the tenant's payments outlined above.

After hearing the above evidence from the agent, the tenant questioned how the payments outlined above resulted in the amounts shown as owing in the agent's claim. In response, the agent revised her testimony yet again, stating that the amount shown as owing in the 10 Day Notice must have been for one-half month's rent owing from September 2013, and rent owing for October 2013 and November 2013.

### Analysis

As I noted at the hearing, I find that the agent's acceptance of repeated and significant payments from the tenant since December 26, 2013 without the issuance of any receipts for "use and occupancy only" has effectively reinstated this tenancy. The tenant understood that his attempts to pay outstanding rent were being accepted by the agent so as to enable him to remain in this tenancy. For this reason, I find that the landlord's 10 Day Notice is no longer valid. I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of that 10 Day Notice.

Without any meaningful evidence in the form of a rent ledger or a series of rent receipts, I find that the agent's testimony regarding the alleged non-payment of rent lacked details and consistency. The agent admitted repeatedly that she did not have exact dates as to when payments were made and did not issue any receipts for any of the repeated payments she accepted from the tenant after the tenancy was scheduled to end on December 26, 2013. While I have no doubt that some rent remains owing, the exact amount of that outstanding rent remains unclear. For example, since January 1, 2014, the agent testified that she has received a total of \$1,905.00 in negotiable payments or cash from the tenant ( $\$825.00 + \$750.00 + \$350.00 = \$1,905.00$ ). Over that period, a total of \$1,400.00 in rent would have become due ( $\$700.00 + \$700.00 = \$1,400.00$ ). Yet, the agent testified that the amount owing since the landlord applied for dispute resolution has actually increased from \$1,625.00 to \$1,750.00. I find that the agent's own sworn testimony calls the accuracy of her claim for a monetary award into question.

I accept that some rent remains owing for this tenancy, a claim that the tenant has not disputed. The exact amount of that outstanding rent is unclear. For this reason and as the agent testified that she fully intends to serve the tenant with a new 10 Day Notice, I have decided to dismiss the landlord's claim for a monetary award for unpaid rent with leave to reapply. I do so as the tenant has committed to make additional payments to the agent to attempt to resolve his outstanding rent balance. Hopefully, this will lead to a resolution of the landlord's concerns about unpaid rent. The landlord is at liberty to

apply for a monetary award for whatever amount remains owing after February 15, 2014.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice issued on December 12, 2013 without leave to reapply. The 10 Day Notice of that date is set aside and is of no force or effect. This tenancy continues.

I dismiss the landlord's application for a monetary award with leave to reapply after February 15, 2014.

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 07, 2014

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Residential Tenancy Branch

