



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes and the only participant who joined the hearing was the landlord's agent. The landlord's agent testified that the documents were served on the tenant by registered mail on February 28, 2014 and provided a receipt number and a tracking number assigned by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this tenancy began about 1 ½ or 2 years ago, and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant failed to pay rent in full for the month of December, 2013 and a balance of \$250.00 remains outstanding. The tenant has not yet paid any rent for the months of January, February or March, 2014. On February 16, 2014 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A signed Proof of Service document has been provided which contains the same information. A copy of the notice has also been provided and it is dated February 16, 2014 and contains an expected date of vacancy of February 26, 2014. The notice states that the tenant failed to pay rent in the amount of \$1,950.00 that was due on February 1, 2014.

Prior to that, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on December 16, 2013. A copy of that notice has also been provided, and it is dated December 16, 2013 and contains an expected date of vacancy of January 16, 2014. The reasons for issuing the notice state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the rental unit.

The landlord's agent testified that the tenant was away for the better part of the winter, from December, 2013 to March, 2014 and had turned the heat off. As a result, water pipes froze and burst in the laundry room. The landlords have asked the tenant to get ahold of him and left notes on the door of the rental unit, but the landlord has not been able to speak with the tenant. The landlord has also provided copies of 3 notes to the landlord from the tenant explaining late rent. Two of the notes also state that the tenant will be away for 2 weeks. The landlord's agent testified that they have not been able to catch him at home, and he has not contacted the landlord other than leaving the notes.

The landlord asks for an Order of Possession and a monetary order for the outstanding rent as well as rent for the month of April, 2014. The landlord does not know when the tenant will vacate or what the extent of the damage is and advertising the rental unit for April availability is not feasible. The landlord also asks to keep the security deposit in partial satisfaction of the claim and recovery of the filing fee.

### Analysis

Firstly, with respect to the 1 Month Notice to End Tenancy for Cause, I find that it is in the approved form, however the landlord's agent testified that rent is payable on the 1<sup>st</sup> day of the month, and such a notice to end tenancy must be given before the date rent is payable and give the tenant one full month of notice after that. In this case, the notice is dated December 16, 2013 and contains an effective date of vacancy of the January 16, 2014. According to the *Residential Tenancy Act*, if served in December, the notice cannot take effect until January 31, 2014. The *Act* also states that incorrect effective dates contained in a notice to end tenancy are corrected to the nearest date that complies with the *Act*, which I find is January 31, 2014. The *Act* also states that the tenant has 10 days to dispute the notice, and if the tenant fails to do so the tenant is conclusively presumed to have accepted the end of the tenancy.

However, the tenant didn't move out, and didn't pay rent. The landlord then served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I accept the evidence and testimony of the landlord's agent that the tenant was served on February 16, 2014 by posting it to the door of the rental unit. Documents served in that manner are deemed to have been served 3 days later, which I find is February 19, 2014. The effective date of that notice is hereby changed to the nearest date that complies with the *Act*, which I find is March 1, 2014. The *Act* states that once served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. I also accept the undisputed testimony of the landlord's agent that the tenant has not paid any rent since the issuance of the notice.

I have no application before me from the tenant disputing either notice, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy but has not moved out of the rental unit. I find that the landlord is entitled to an Order of Possession effective on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord's agent that the rental arrears are \$250.00 for December, 2013 and \$2,550.00 for January, February and March, 2014. I also accept that the landlord has no idea when the tenant will actually vacate the rental unit since the landlord has not been able to reach the tenant and it is clear the tenant is away working. Further, I accept the testimony of the landlord's agent that there are repair issues from frozen pipes, and advertising now to re-rent for April is not feasible. Therefore, I find that the landlord has established a monetary claim for April rent as well.

Since the landlord has been successful with the claim, the landlord is also entitled to recovery of the filing fee for the cost of filing. I order the landlord to keep the security deposit in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference, as follows:

DATE	DESCRIPTION	AMOUNT	BALANCE
December, 2013	Rent Outstanding	\$250.00	\$250.00
January, 2014	Rent Outstanding	\$850.00	\$1,100.00
February, 2014	Rent Outstanding	\$850.00	\$1,950.00
March, 2014	Rent Outstanding	\$850.00	\$2,800.00
April, 2014	Loss of Revenue	\$850.00	\$3,650.00
	Filing Fee	\$50.00	\$3,700.00
	Less Security Deposit	- \$425.00	\$3,275.00

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,275.00.

These orders are final and binding on the parties and may be enforced.

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: March 27, 2014

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Residential Tenancy Branch

