



# 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 was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with an agent due to the landlord's language barrier. The tenant and an observer also attended. The landlord, the landlord's agent and the tenant each gave affirmed testimony. The landlord provided evidentiary material prior to the commencement of the hearing to the tenant and to the Residential Tenancy Branch. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues were raised with respect to service or delivery of documents or evidence.

### **Issue(s) to be Decided**

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

### **Background and Evidence**

The landlord's agent testified that this month-to-month tenancy began on January 1, 2014 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. A tenancy agreement was signed by the parties, which requires the tenant to pay a security deposit in the amount of \$425.00 by January 15, 2014 but the tenant has not yet paid it to the landlord. The tenancy agreement referred to by the landlord's agent has been provided and it appears

to be a note that states: "I, (tenant's name) paid \$750 on Dec 26 2013 and \$100 on Dec 23 for a total of \$850 for rent for Jan 1 2014 rent I will pay damage deposit on Jan 15 2014," and contains a signature and is said to be signed by the tenant.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of February, 2014 leaving a balance outstanding of \$425.00. The tenant further failed to pay any rent for the month of March, 2014 leaving an additional \$850.00 outstanding, for a total of \$1,275.00.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenant and the landlord's agent served it by personally handing it to the tenant's spouse on February 8, 2014. A copy of the notice has been provided for this hearing and it is addressed to 2 tenants with only a first names. The notice is dated February 7, 2014 and contains an expected date of vacancy of February 17, 2014. The notice states that the tenant failed to pay rent in the amount of \$850.00 that was due on February 1, 2014. Only the first page of the 2-page form has been provided.

On February 14, 2014 the tenant paid the landlord \$425.00. The tenant made a receipt and the landlord signed it. The landlord's agent does not know what was written on the receipt; the tenant was supposed to give the landlord a copy but didn't.

The landlord testified that the tenant paid \$425.00 in February, 2014 and told the landlord he'd pay the other \$425.00 at the end of the month and the damage deposit but didn't pay either.

The tenant testified that the parties made an agreement in February wherein the landlord would fix the fridge, stove and toilet when \$425.00 of the rent was paid, but nothing got fixed. The landlord agreed in writing that rent for the month of February would be \$425.00 due to the repairs required. A copy of that agreement was not provided for this hearing, but the tenant read a document and testified that it was verbatim: "I, (tenant's name) have paid \$425.00 for February, 2014 rent in cash to the landlord on February 14, 2014 due to violations to myself and my family for inconvenience and unwanted entrance into our suite more than once at (address of rental unit)."

## **Analysis**

Firstly, with respect to the landlord's application for an Order of Possession, although the notice to end tenancy does not contain the full name of the tenant, the landlord has only provided 1 page of the 2-page document. I have no evidence before me to ensure that the tenant received both pages. Also, it's clear that the tenant gave the landlord

\$425.00 on February 14, 2014. The notice is dated February 7, 2014 and the landlord's agent testified that it was served on February 8, 2014. The tenant then wrote up a document that has not been provided as evidence and the tenant says it's a receipt and an agreement. The landlord's agent believes it to be a receipt but stated that the landlord didn't get a copy. The parties agree that the document does not indicate that the payment is being received for use and occupancy only, and therefore, I find that the landlord has reinstated the tenancy, and the landlord's application for an Order of Possession is dismissed.

With respect to the landlord's claim for a monetary order, I find that rent is payable in the amount of \$850.00 per month. The tenant has paid \$425.00 for February and has not paid any amount for March, 2014. The tenant claims to have an agreement with the landlord for the \$425.00 owed for February, but I am not satisfied that the agreement is valid or legal. I do not accept that the tenant has established that rent doesn't have to be paid in full. Therefore, I find that the landlord has established a monetary claim as against the tenant for \$1,275.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### **Conclusion**

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,325.00.

This order is 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 19, 2014

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Residential Tenancy Branch

