



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This dispute resolution process originated upon the landlord's application for a direct request proceeding pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

The landlord's application was successful, as the original Arbitrator awarded the landlord a monetary order for unpaid rent for February 2014 in the amount of \$1450 and an order of possession for the rental unit due to unpaid rent in a Decision dated February 21, 2014.

On February 26, 2014, the tenant filed an application for review consideration of the Decision and orders of February 21, 2014, which resulted in a favourable decision.

The reviewing Arbitrator, in a Review Consideration Decision dated March 3, 2014, suspended the original Arbitrator's Decision and orders of February 21, 2014, until such time as a participatory hearing on the landlord's application is conducted. The tenant's application for review consideration alleged that she had evidence that the Decision of December 13, 2013, was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act* as she claimed that she was not served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), or the Notice of the direct request proceeding.

The reviewing Arbitrator granted the tenant a participatory review hearing based her finding that, although there was not enough information or facts to clearly establish that the landlords were fraudulent, the Decision and orders of February 21, 2014, may have been different if a participatory hearing was conducted and the Arbitrator had the benefit of the tenant's evidence with respect to service of documents.

At this review hearing, the tenant and the landlord attended.

The hearing process was explained to the parties, following which they provided affirmed testimony and referred to relevant documentary evidence supplied in advance of the hearing.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

#### Issue(s) to be Decided

1. Will the Decision and orders of February 21, 2014, be confirmed, varied, or set aside?

#### Background and Evidence

Due to the nature of the original application for dispute resolution, which was the landlord's application for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent, pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), and to the fact a review hearing has been granted, the landlord proceeded first in this hearing to explain and support his original application.

The landlord testified that he attached the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit on February 2, 2014. The landlord supplied photographs of the Notice attached to the door.

The Notice listed unpaid rent of \$4350, which was due on February 1, 2014; the landlord, however, in his application for dispute resolution sought only the unpaid rent for February, or \$1450, due under the tenancy agreement.

The landlord submitted that since he issued the Notice, he has not received any further rent payments, and that the tenant was residing in the rental unit at least to the week prior to the hearing.

It was on the basis of this undisputed 10 Day Notice that the landlord applied for, and received an order of possession for the rental unit and a monetary order for unpaid rent for February 2014 through his application under the direct request proceeding.

In response, the tenant submitted that the landlord changed the locks to the rental unit in January, causing her to call the police to the rental unit. The tenant said that the police instructed the landlord to give the tenant a key to the rental unit. The tenant confirmed that the landlord did give her a key to the rental unit, but that as he did not give her two sets of keys, she no longer owed the landlord rent.

The tenant agreed that she resided in the rental unit in February and March, and did not pay rent. The tenant submitted that the landlord once again changed the locks on April 18, 2014.

As to why the Notice was not disputed, the tenant contended that she never received the Notice as she never saw it attached to the door.

### Analysis

I have reviewed and considered the documentary evidence and the oral evidence taken at this hearing and in weighing the evidence, I find that the tenant failed to convince me that she did not receive the landlord's 10 Day Notice. I was influenced by the tenant's testimony that she believed she did not owe rent because she received only 1 key to the rental unit; yet the tenant confirmed that she resided in the rental unit at least in February and March 2014, without paying rent. I was further influenced by the landlord's photographs showing the Notice attached to the tenant's door.

Due to the above, I therefore find the landlord properly served the tenant a 10 day Notice, on February 2, 2014, by attaching it to the tenant's door, as stated by the landlord, that rent of at least \$1450 was owed when the Notice was issued, and that the tenant did not pay the outstanding rent within 5 days or at all.

On this basis, I confirm and reinstate the original Decision, monetary order for \$1450, and the order of possession for the rental unit, all dated February 21, 2014, pursuant to section 82(3) of the Act, and they remain valid and enforceable.

I advise that I have only dealt with the matters of the landlord's original application, and have not dealt with any other issues, such as any issues the tenant may have with the landlord changing the locks to the door of the rental unit as this hearing dealt only with the landlord's application.

The landlord is, however, advised that under section 31 of the Act, he is prohibited from changing the locks to the rental unit.

Conclusion

The Decision, order of possession for the rental unit, and the monetary order for \$1450 in favor of the landlord issued February 21, 2014, are confirmed.

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: April 25, 2014

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Residential Tenancy Branch

