



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TERRA LAND CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC

### Introduction

This participatory hearing was scheduled pursuant to a decision issued on February 27, 2014 under the Direct Request procedure to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. In the decision issued February 27, 2014 the landlord was ordered to serve the tenant(s) with a Notice of Hearing and other supporting documents within three days of receiving the decision.

At the hearing of April 23, 2014 only the landlord appeared. The landlord submitted registered mail receipts, including tracking numbers, to prove the hearing documents were sent to both tenants named on the tenancy agreement at the rental unit address on March 10, 2014. The registered mail sent to the male tenant was returned by Canada Post with the notation "moved". The registered mail sent to the female tenant was successfully delivered to her on March 11, 2014. The landlord also confirmed that the male tenant had moved out several months ago but that the female tenant remains in possession of the rental unit.

As the landlord named only the female tenant in filing the Application for Dispute Resolution and I was satisfied the female tenant was duly served with notification of this proceeding, I continued to hear from the landlord in the absence of the tenant.

The landlord requested the application be amended to include a claim for loss of rent for the months of March and April 2014 since the tenant is still living in the rental unit and the landlord has suffered further losses while waiting for this hearing. The landlord also requested the application be amended to request authorization to retain the security deposit in partial satisfaction of the unpaid rent. I found both of these requests non-prejudicial to the tenant since the tenant has continued to benefit from use and occupation of the rental unit and retention of the security deposit will reduce any Monetary Order given to the landlord.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The month-to-month tenancy commenced January 15, 2013 and the landlord collected a \$450.00 security deposit. The monthly rent of \$900.00 is payable on the 1<sup>st</sup> day of every month.

On February 3, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), as evidenced by her signature acknowledging receipt of the Notice. The Notice indicates rent of \$375.00 was outstanding as of February 1, 2014 and has an effective date of February 13, 2014. The tenant did not file to dispute the Notice and continues to occupy the rental unit.

The landlord submitted that the balance of outstanding rent appearing on the Notice represents the monthly rent of \$900.00 less a payment of \$525.00 received from Income Assistance.

The landlord testified that Income Assistance continues to send him partial payments of \$525.00 including a payment at the end of February 2014 and March 2014 for the subsequent months.

In addition to obtaining an Order of Possession, the landlord seeks to recover unpaid rent of \$375.00 for the month of February 2014 plus loss of rent of \$375.00 for March 2014 and \$375.00 for April 2014.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Co-tenants are jointly and severally liable for paying the monthly rent.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to

dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord personally served the tenant with a 10 Day Notice on February 3, 2014. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on February 13, 2014. I accept that the partial payments received from Income Assistance after the effective date of the Notice did not reinstate the tenancy. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for February 2014 in the amount of \$375.00 and loss of rent of \$375.00 for March 2014 and further \$375.00 for April 2014 since the tenant continues to occupy the rental unit.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: February 2014	\$ 375.00
Loss of Rent: March 2014	375.00
Loss of Rent: April 2014	375.00
Filing fee	50.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$ 725.00

To enforce the Monetary Order, the landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$725.00 to serve and enforce as necessary.

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 24, 2014

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Residential Tenancy Branch

