



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNR, OPR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 31, 2014, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. The landlord also seeks repayment of 2 loans granted to the tenant during the tenancy.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the landlord entitled to an Order of Possession based on the 10-Day Notice?

Is the landlord is entitled to monetary compensation for rent and other debts?

### **Background and Evidence**

The landlord testified that the tenancy started on November 1, 2006 and the current rent is \$1,050.00 per month. The landlord testified that the tenant failed to pay all of the rent for several months during 2013 and accrued a debt of \$6,000.00 with the landlord over that one-year period.

The landlord testified that, when the tenants then failed to pay \$1,050.00 rent owed for January 2014, the landlord issued and served a 10-Day Notice to End Tenancy for Unpaid Rent on January 31, 2014, terminating the tenancy effective February 10, 2014. The landlord testified that the tenants did not pay the claimed arrears owed within 5 days of receiving the 10-Day Notice to End Tenancy, which would have cancelled the Notice. The landlord pointed out that the tenants have failed to pay any portion of the

outstanding arrears at all and, in fact, the tenants did not pay the \$1,050.00 rent owed for February 2014 and \$1,050.00 rent for March 2014, accruing total arrears of \$9,1250.00 in the rental account as of today's date.

Based on the 10-Day Notice to End Tenancy for Unpaid Rent , the landlord has requested an Order of Possession and a monetary order for the rental arrears.

The landlord testified that he also granted the tenant 2 loans during the tenancy, neither of which were ever repaid, and the landlord is claiming repayment of these loans.

The tenant did not dispute that they failed to pay their rent, accruing the total arrears claimed by the landlord. The tenant confirmed receipt of the Ten Day Notice to End Tenancy dated January 31, 2014 and acknowledged that they did not pay all of the outstanding arrears within 5 days after receiving the Notice.

The tenant testified that they have been in a bad financial situation with cash-flow problems resulting in their being unable to pay their rent. The tenant testified that they offered to work in exchange for rent owed, but the landlord did not accept this proposal. The tenant testified that they need more time to get the funds they must have in order to relocate and time to find a place to move to.

### **Analysis**

Section 26 of the Act states rent must be paid when due, under the tenancy agreement, whether or not the landlord complies with the Act or the tenancy agreement. .

Testimony from both parties established that the tenant did not pay the rent when due. I find the tenant's testimony explaining why it wasn't paid to be irrelevant to this dispute.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I find that the tenant did neither.

The Ten-day Notice includes written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if they disagree with it.

In this instance I find that the tenant was in arrears at the time the Notice was served on January 31, 2014 and the tenant did not pay the arrears within 5 days. In fact, I find that the tenant failed to pay rent owed for the following 2 months as well.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date. The effective date of the 10-Day Notice was February 10, 2014.

Given the above, I find that the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$9,250.00 comprised of \$9,150.00 rental arrears and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's security deposit of \$500.00 and interest of \$15.56 in partial satisfaction of the claim leaving a balance due of \$8,734.44.

I find that the landlord's claims for repayment of the private loans that were given to the tenants must be dismissed as financial transactions or contracts, other than tenancy related agreements, do not fall under the authority of the Residential Tenancy Act.

Based on the evidence, I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the evidence before me, I hereby grant the Landlord an order under section 67 for \$8,734.44. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

The landlord is partly successful in the application and is granted a monetary order for rent owed and an Order of Possession.

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 01, 2014

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Residential Tenancy Branch

