



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for: an Order of Possession and a Monetary Order for unpaid rent; to keep the Tenant's security deposit; and to recover the filing fee for the cost of making the Application. The Landlord also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord testified that he personally served the Tenant with a copy of the Application and the Notice of Hearing documents (the "hearing documents") on April 29, 2014. As a result, I accept the Landlord's testimony and find that the Landlord served the hearing documents to the Tenant pursuant to section 89(1) (a) of the Act.

However, there was no appearance by the Tenant during the fourteen minute duration of the hearing and there was no submission of written evidence by the Tenant prior to this hearing, despite being served the hearing documents in accordance with the Act.

The Landlord requested that his monetary amount for unpaid rent be amended to include unpaid rent for May and June, 2014 for a total claim of \$4,750.00. As a result, I allowed the Landlord to amend his Application for the increased amount under the authority afforded to me by Section 64(3) (c) of the Act. As a result, I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

- Is the Landlord entitled to a Monetary Order for ten months of unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

### Background and Evidence

The Landlord testified that this tenancy started on August 1, 2012 on a month to month basis. No written tenancy agreement was completed but the Tenant paid the Landlord \$235.00 as a security deposit at the start of the tenancy and rent was established between the parties in the amount of \$475.00 payable by the Tenant on the first day of each month.

The Landlord testified that the Tenant had failed to pay for rent for the months of September, October, November and December, 2013. As a result, the Landlord issued the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") in December, 2013 for the amount of \$1,900.00. The Landlord subsequently applied for an Order of Possession through dispute resolution. During the hearing which was scheduled on January 6, 2014 (the file number for which is detailed on the front page of this decision), the Landlord failed to provide a copy of the Notice and the Landlord's Application was dismissed.

The Landlord testified that for the next two months the Tenant promised that he would pay rent and vacate the rental suite. However, in April, 2014 the Tenant informed the Landlord that he would not be leaving the rental suite.

As a result, the Landlord testified that he personally served the Tenant with another Notice on April 9, 2014. The Notice was provided as evidence and shows an expected date of vacancy of April 19, 2014 due to \$3,800.00 in unpaid rent due on April 1, 2014. This amount comprised of unpaid rent for the months of September, 2013 to April, 2014 (eight months). In addition, the Landlord testified that the Tenant had not paid rent for May and June, 2014 and seeks to claim a total amount of unpaid rent for \$4,750.00.

### Analysis

Having examined the Notice served on April 9, 2014, I find that the contents on the approved form complied with the requirements of the Act and that it was served to the Tenant, pursuant to Section 88(a) of the Act.

Sections 46(4) and (5) of the Act state that within five days of a Tenant receiving the Notice, a Tenant must pay the overdue rent on the Notice or make an Application to

dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant as the effective date of vacancy on the Notice has now passed.

Based on the Notice provided as evidence for the hearing and the undisputed testimony of the Landlord, I find that the Landlord is also entitled to a Monetary Order for unpaid rent in the amount of \$4,750.00 comprising of ten months worth of rent arrears.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$4,800.00. As the Landlord already holds the Tenant's \$235.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlord is awarded \$4,565.00.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to section 67 of the Residential Tenancy Act in the amount of **\$4,565.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

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: June 12, 2014

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Residential Tenancy Branch

