



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF  
CNR, RR, FF, O

### Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by both the Landlords and the Tenant.

One of the Landlords appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing.

The Landlords’ Application contained a number of changes made at the time it was made and I was unclear as to what the Landlords had applied for. The Landlord stated that they were applying for an Order of Possession and a Monetary Order for unpaid rent as well as money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement relating to unpaid rent for May and June, 2014. At the conclusion of the hearing the Landlord also requested to keep the Tenant’s security deposit and recover the filing fee from the Tenant. As a result, I amended the Landlord’s Application with these requests under the authority provided to me by Section 64(3) (c) of the Act and I have considered the Landlord’s Application accordingly.

The Landlord testified that he had served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail to the Tenant’s rental unit address; the Landlord provided a copy of the Canada Post tracking receipt as evidence for this method of service.

The Tenant made an Application: to cancel the notice to end tenancy, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; to recover the filing fee from the Landlord; and for ‘Other’ issues. However, the Tenant failed to appear for the 12 minute duration of the hearing, despite the Tenant’s Application being scheduled to be heard on the same date and time as the Landlords’ Application.

As a result, I find that the Landlord served the Tenant with the Notice of Hearing documents and the Application, pursuant to Section 89(1) (c) of the Act.

The Tenant submitted a copy of the two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") at the time he made his Application. The Tenant also submitted digital evidence prior to the hearing; however, this was served late in accordance with the Dispute Resolution Rules of Procedure. As the Tenant failed to appear for the hearing and provide an explanation as to why this was submitted late, I have not considered this digital evidence in my findings below.

I have carefully considered the undisputed testimony and evidence of the Landlord as follows.

#### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent for the months of April, May and June, 2014?
- Are the Landlords entitled to keep the Tenant's security deposit in full or partial satisfaction of his claim?

#### Background and Evidence

The Landlord confirmed the details on the written tenancy agreement that this month to month tenancy started on February 1, 2014. Rent is payable by the Tenant in the amount of \$1,850.00 on the first day of each month. The Tenant paid a \$925.00 security deposit on January 30, 2014 which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent which was due on April 1, 2014 in the amount of \$1,850.00. As a result, the Landlord served the Tenant with the Notice on May 1, 2014 by attaching it to the Tenant's door. The Notice was provided as evidence for the hearing and shows an effective vacancy date of May 1, 2014.

The Landlord further testified that since the time of issuing this Notice and making the Application, the rent for April, 2014 is still unpaid and the Tenant has also not paid rent for May and June, 2014. As a result the Landlord claims a total loss of three month's rent in the amount of \$5,550.00.

Analysis

Having examined the Notice served to the Tenant on May 1, 2014, I find that the contents complied with the requirements of Section 52 of the Act.

I accept that the Tenant was served with the Notice by attaching it to his door on May 1, 2014, pursuant to Section 88(g) of the Act. As a result, I find that the Tenant was deemed served with the Notice on May 4, 2014 pursuant to Section 90(c) of the Act and the effective date of vacancy on the Notice is therefore corrected to May 14, 2014 pursuant to Section 53 of the Act.

Sections 46(4) and (5) of the Act explain that within five days of a Tenant receiving a Notice, a Tenant must pay the overdue rent 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 effective date of the Notice.

While the Tenant did make an Application to dispute the Notice within the allowable time limits, the Tenant failed to appear for the hearing to dispute the Landlord's evidence and provide testimony as to why the rent was not paid.

Furthermore, a Tenant may not withhold rent for repairs or a failure of the Landlord to comply with the Act, unless they have grounds to do so under the Act.

As a result, I accept the Landlord's testimony and written evidence that the Tenant has not paid full rent for the months of April, May and June, 2014 in the amount of **\$5,550.00**. Therefore the Landlord is entitled to an Order of Possession and a Monetary Order for this amount.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of his Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$5,600.00**.

As the Landlord already holds the Tenant's **\$925.00** 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 **\$4,675.00**.

Conclusion

As the effective date of vacancy on the Notice has passed, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and 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 Act in the amount of **\$4,675.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the Tenant failed to appear for the hearing to present the merits of his Application and the Landlord appeared, the Tenant's Application is dismissed **without** leave to re-apply.

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 24, 2014

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Residential Tenancy Branch

