



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*OPR, MNR, MNSD, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, and the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, the filing fee and to retain the security deposit?

### **Background and Evidence**

The tenancy started on February 15, 2014. The monthly rent is \$525.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit of \$250.00. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord stated that the tenant failed to pay rent on March 01, 2014. On March 06, 2014, the landlord served the tenant with a ten day notice to end tenancy for \$525.00 in unpaid rent. The tenant stated that the landlord allowed him to use the security deposit towards rent and he paid the balance in cash at the time he received his "welfare cheque" which was prior to March 01, 2014. The landlord denied having received any rent for March in cash from the tenant. The notice to end tenancy dated March 06, 2014 was for \$525.00 in unpaid rent.

The tenant did not dispute the notice and continued to occupy the rental unit.

The tenant at first stated that that he did not pay rent for April because the landlord broke into the rental unit and placed his belongings on the lawn outside the rental unit. The tenant was not sure of the date that this happened and cited three different dates through the hearing. Later during the hearing the tenant stated that he paid rent for April and May in cash but did not file any evidence to support his testimony and the landlord denied having received any rent for both months of April and May.

The landlord stated on April 28, 2014, the tenant moved his belongings out of the rental unit himself and informed the landlord that he had found a place down the street. The landlord stated that he visited the unit while the tenant and his friends were moving their belongings out and told the tenant not to bother to clean. The landlord stated that as soon as the tenant left, he changed the locks.

The tenant stated that it was the landlord who moved his belongings out and locked him out. The tenant agreed that a couple of days later, he moved back in. At the time of the hearing, the tenant stated that he had found another place in April, but did not hand over the rental unit to the landlord as he was waiting for the outcome of this hearing.

The matter regarding the alleged break and enter by the landlord is being dealt with by the local police

The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order for rent for the months of March, April and May 2014 plus the filing fee.

### **Analysis**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on March 06, 2014 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I further find that the landlord agreed to allow the tenant to use the security deposit towards rent for March and therefore the unpaid portion of rent for March is \$275.00. Since the landlord agreed that he changed the locks in April and did not provide the tenant with a key, I dismiss the landlord's claim for rent for the months of April and May. Since the landlord has proven his case, he is also entitled to the filing fee of \$50.00.

I order that the landlord retain the security deposit of \$250.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$325.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **\$325.00**.

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: May 22, 2014

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Residential Tenancy Branch

