



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIM GIN & SONS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant's Application: CNR, MNDC, OLC, FF

Landlord's Application: OPR, MNR, FF

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, and more time to make such an application; a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, Orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant stated that he abandoned the rental unit in mid-May 2014. As the tenant has abandoned the rental unit I found it unnecessary to further consider his request to cancel the Notice to End Tenancy or Orders for compliance. The landlord indicated that abandonment of the unit has not been confirmed and the landlord requested an Order of Possession be provided. The tenant did not have any objection to providing the landlord with an Order of Possession.

With respect to the tenant's monetary claim, the tenant requested the proceeding be adjourned so that he may gather and submit evidence in support of his claim. I denied his request for adjournment but dismissed the monetary claim with leave to reapply.

The tenant stated he did not receive the landlord's Application for Dispute Resolution. The landlord provided evidence that it was sent to him via registered mail at the rental unit on May 14, 2014. The landlord stated the tenant was seen at the residential

property in late May 2014. The tenant stated he entered a recovery centre on May 24, 2014 and was not at the building after that date. Residential Tenancy Policy Guideline 12: *Service Provisions* provides that when a party uses registered mail to serve another party at their residence, the address used must be the other party's address of residence at the time of mailing. I was satisfied the rental unit was the tenant's address of residence as of May 14, 2014 based upon the testimony of both parties. The tenant then acknowledged that he received a registered mail notice card in May 2014 but claimed he could not pick up the mail because the name on the notice card was different than his last name. The landlord's agent testified and pointed to the registered mail receipt as evidence that she used the tenant's last name correctly in sending the registered mail to him. Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or pick up their mail. In this case, I was satisfied the landlord served the tenant with the landlord's Application for Dispute Resolution and evidence in a manner that complies with the Act, even though he did not pick up the registered mail, and I proceeded to consider the landlord's claims against the tenant.

With respect to the landlord's monetary claims, the landlord indicated on the Application for Dispute Resolution that \$2,100.00 was being sought for unpaid rent; however, the details of dispute merely state "Rent \$700". The 10 Day Notice to End Tenancy for Unpaid Rent included in the landlord's evidence package also indicates the unpaid rent is \$700.00. The landlord explained that \$2,100.00 represents unpaid and/or loss of rent for the months of May, June and July 2014. The Act provides that an Application for Dispute Resolution must include full particulars as to the nature of the dispute and the claims against the other party. This requirement is in keeping with the principles of natural justice. Natural justice affords a respondent the right to know the basis of the claims against them so that they may provide a response or defense. I found the landlord did not provide sufficient particulars as to the claim of \$2,100.00 and I limited the monetary claim to unpaid rent of \$700.00 for the month of May 2014. The landlord was given leave to reapply with respect to loss of rent for the months of June and July 2014.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent for the month of May 2014?

### Background and Evidence

The tenant was required to pay rent of \$700.00 on the 1<sup>st</sup> day of every month. The tenant failed to pay rent for the month of May 2014 and on May 2, 2014 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice indicates rent of \$700.00 was outstanding for May 2014 and has a stated effective date of May 12, 2014. The tenant filed to dispute the 10 Day Notice on May 12, 2014.

The tenant stated that he did not pay rent for May 2014 because the landlord violated his right to quiet enjoyment. The tenant acknowledged that he had not been given authorization from an Arbitrator or the landlord to withhold rent for May 2014. As a loss of quiet enjoyment does not in itself entitle a tenant to withhold rent I did not seek a response from the landlord. A loss of quiet enjoyment may entitle the tenant to compensation; however, as indicated earlier in this decision, the tenant's claims for such compensation have been dismissed with leave to reapply.

The tenant had no objection to the landlord's request for an Order of Possession.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides very limited circumstances where a tenant has a legal right to withhold rent. The tenant's assertion that he suffered a loss of quiet enjoyment is not a legal basis for withholding rent without the prior authorization or consent of an Arbitrator or the landlord. The tenant did not have any such authorization prior to withholding rent for the month of May 2014. Therefore, I find the tenant was obligated to pay rent that was due on May 1, 2014.

Since the tenant did not pay rent that was due on May 1, 2014 the landlord was in a position to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, which the landlord did on May 2, 2014. Since the tenant did not apply to dispute the 10 Day Notice or pay the outstanding rent within five days of receiving the 10 Day Notice, and did not present a legal basis for withholding rent, I find the tenancy ended on the stated effective date of May 12, 2014. Therefore, I grant the landlord's request for an Order of Possession that may be served and enforced in the event the tenant has not abandoned the property. The Order of Possession is 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 the month of May 2014 in the amount of \$700.00. I also award the landlord the \$50.00 filing fee paid for this application. The landlord is provided a Monetary Order in the total amount of \$750.00 to serve upon the tenant and enforce as necessary.

### Conclusion

The landlord has been provided an Order of Possession that may be served and enforced in the event the tenant has not abandoned the rental unit. The landlord has been provided a Monetary Order in the total sum of \$750.00 to serve and enforce as necessary.

The landlord's request for compensation for unpaid and/or loss of rent for the months of June and July 2014 were not considered as part of this hearing and was dismissed with leave to reapply.

The tenants' monetary claims against the landlord have been dismissed with leave to reapply.

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: July 03, 2014

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Residential Tenancy Branch

