



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, OPR, FF, CNR

### **Introduction**

The hearing was convened to deal with an application by the tenant seeking an order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent.

This hearing was also to deal with a cross Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order based on the Notice to End Tenancy for Unpaid Rent dated May 8, 2014.

A representative of the landlord was in attendance. The person representing the landlord stated that, although the owner of the property did not attend the hearing, she had legal "*power of attorney*" over her elderly aunt's business. No copies of the power of attorney documents were submitted into evidence. However, I accept that the individual attending is at least acting as agent for the landlord and the hearing proceeded.

Although the tenant was aware of the date scheduled to hear their application and the tenant was also served with the landlord's cross application and Notice of Hearing by registered mail, as confirmed by the Canada Post Tracking number, nobody for the tenant appeared.

As the tenant did not appear to present their evidence, the tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

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

The remaining issues to be determined based on the testimony and the evidence are:

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to monetary compensation for rental arrears owed?

### **Background and Evidence**

Submitted into evidence was a copy of the 10-Day Notice to End Tenancy dated May 8, 2014 with effective date of May 20, 2014. The Notice indicated that the tenant is \$9,275.00 in arrears for rent and also owes \$1,396.20 for utilities.

No copy of the tenancy agreement was in evidence and the landlord's representative stated that a written tenancy agreement was never signed. The landlord submitted copies of utility invoices dated between February 2013 and February 2014, all of which showed that the previous invoice was paid. The account for the utilities for the subject address is in the name of the owner's spouse and not the tenant.

The landlord's agent testified that the tenancy began in January 2013 and the tenant is a family friend allowed to reside in the unit as the owner was in the hospital. The agent stated that the rent is \$750.00 and, although a security deposit was required, no security deposit was ever paid. The landlord's agent testified that the tenant failed to pay all of the rent owed over a period of 16 months and fell into arrears. The landlord testified that the tenant was issued a Ten Day Notice to End Tenancy for Unpaid Rent on May 8, 2014.

The landlord testified that the tenant did not pay the arrears shown on the Notice and then also failed to pay \$750.00 rent for June and \$750.00 rent owed for July 2014. The landlord has requested an Order of Possession and a monetary order for rent owed.

In addition to the above, the landlord is requesting compensation for utility arrears.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant's application to dispute the Notice was dismissed as the tenant did not attend.

Section 55(1) of the Act states that, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Therefore I find that the landlord is entitled to an Order of Possession.

In regard to the landlord's claim for compensation of utility arrears, I find that section 46(6) of the Act provides that, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after a written demand for payment has been issued, then the landlord may treat the unpaid utility charges as unpaid rent and may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

However, with respect to the utility claim, I find the following:

- There is no clear tenancy term specifying that the tenant must pay for any utilities because no written agreement apparently exists. Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.
- The utility invoices were issued to an account in the name of a third party and are not in arrears for the amount claimed on the Ten Day Notice to End Tenancy for Unpaid Rent as the bills have been paid.
- The Ten Day Notice to End Tenancy for Unpaid Rent fails to indicate what date a written demand for utility payment was made to the tenant.

Based on the above facts I find that the landlord is not entitled to be compensated for the cost of utilities.

In regard to the alleged rental arrears, I find that, in the absence of a tenancy agreement, there is no way to ascertain what the monthly rental rate is, nor under what terms the tenancy was formed.

Based on the evidence before me, I find that the landlord has not sufficiently met the burden of proof to justify the compensation being claimed. Therefore, I find that the landlord's monetary claim for rent must be dismissed.

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

I hereby dismiss the portion of the landlord's application dealing with the monetary claim for rent and utilities without leave to reapply.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

**Conclusion**

The tenant's application is dismissed in its entirety as the tenant did not attend. The landlord is partly successful in the cross application and is granted an Order of Possession. The portion of the landlord's application seeking monetary compensation for rental arrears is dismissed without leave.

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 14, 2014

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Residential Tenancy Branch

