



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
                                CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities.

Both parties attended the hearing and the landlord was assisted by an agent. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the notice to end tenancy be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$995.00 per month is payable in advance on the 1<sup>st</sup> day of each month. A copy of the tenancy agreement has

been provided. On January 26, 2014 the landlord collected a security deposit from the tenant in the amount of \$495.00 which is still held in trust by the landlord.

The tenant failed to pay rent when it was due for the month of May, 2014. The landlord spoke to the tenant who stated that she would take care of it and get back to the landlord the following day. However, the tenant did not contact the landlord and did not answer text or telephone messages. On May 25, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The notice was personally served on the tenant by an agent of the landlord on that date and a copy of a Proof of Service document bearing that information has been provided. The tenant has also provided a copy of the notice to end tenancy, which is dated May 25, 2014 and contains an expected date of vacancy of June 4, 2014. It states that the tenant failed to pay rent in the amount of \$995.00 that was due May 1, 2014.

The tenant has not paid any rent since the issuance of the notice and is now in arrears for May, June and July, for a total of \$2,985.00.

The tenant testified that she does not have the means to pay the rent, and did not intentionally fail to pay. The landlord is a great landlord, but the tenant has been waiting for money from FMEP and ICBC. Contact with the tenant's lawyer has not provided any money and the tenant no longer qualifies for assistance from the Ministry. The tenant wishes to pay the rent in full.

### Analysis

The tenant has not disputed that rent is due and owing to the landlord for the months of May, June and July, 2014.

The *Residential Tenancy Act* states that once a landlord issues a notice to end tenancy the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or to dispute the notice within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date.

In this case, I find that the tenant disputed the notice within the time required, but has no defence; the tenant has not paid the rent.

I have reviewed the notice to end tenancy and find that it is in the approved form and contains information required by the *Act*. In the circumstances, I find that the landlord is

entitled to an Order of Possession on 2 days notice to the tenant; the effective date of vacancy contained in the notice to end tenancy has already passed. I further find that the landlord has established a monetary claim for unpaid rent as against the tenant in the amount of \$2,985.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I hereby order the landlord to keep the \$495.00 security deposit, and I grant the landlord a monetary order for the difference, in the amount of \$2,540.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit of \$495.00 and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential tenancy Act* in the amount of \$2,540.00.

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

These orders are final and binding and may be enforced.

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 15, 2014

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Residential Tenancy Branch

