



# 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 was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's agent and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

The parties advised me there was an error in the tenant's first name on the application. The tenant confirmed that although she goes by one name LP her legal name is EP. The parties did not raise any objections to the error being corrected and this has now been amended on the application.

The tenant also advised that she had filed an application. The tenant did not recall the file number; the Arbitrator has no record of an application from the tenant being scheduled to be heard with the landlord's application. Upon further investigation it was

found that the tenant's application had been filled too late to be joined to the landlord's application and the tenant's application had been terminated.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2009. The rent for this unit is \$2,000.00 per month due on the 15<sup>th</sup> of each month. The tenant paid a security deposit of \$1,000.00 at the start of the tenancy.

The landlord testified that the tenant failed to pay rent that was due on May 15, 2014 and rent due on June 15, 2014. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on June 25, 2014 in person. The Notice informed the tenant that the tenant had five days to pay the outstanding rent of \$4,000.00 or file an application to dispute the Notice or the tenancy will end on June 25, 2014.

The landlord testified that the tenant did not make any further rent payments and has since failed to pay rent that was due on July 15, 2014 and August 15, 2014. The landlord requests to amend their application to recover the unpaid rent From July 15 to August 15 and from August 15 to September 15. The total amount of unpaid rent is now \$8,000.00.

The landlord seeks an Order to keep the security deposit of \$1,000.00 in partial satisfaction of their monetary claim. The landlord also seeks an Order of Possession effective as soon as possible and to recover the filing fee of \$50.00.

The tenant testified that although she agrees that she has not paid any rent since May, 2014 the tenant disagreed with the amount owed. The tenant testified that the landlord had verbally agreed to reduce the rent to \$1,500.00 when the landlord started to do development work in the back yard in February, 2014. The tenant's agent testified that the yard had a pool which the landlord would not repair and so has filled the pool in with rock and dirt, the backyard has also been filled with rock and dirt, fences have been taken down and the roadway on the back street has been closed. The tenant's agent testified that this work has been going on for the last six months and the tenant has not been paid the rent because of this dispute.

The tenant testified that the swimming pool formed part of this tenancy when the pool pump broke down the landlord would not repair it and the tenant did not ask the landlord to fill the pool in but just to cover it to make it safe.

The landlord testified that the tenant was a foster carer and as the pool liner needed to be replaced this would have cost too much money so the tenant asked the landlord to fill the pool in order to make it safe for her foster child. The landlord testified that when the pool was filled in there was some excess soil and back fill which was spread over the yard. The landlord testified that the back road access is still in place. The landlord disputed that she has ever told the tenant or the tenant's son that she would reduce the rent by \$500.00 a month. The landlord testified that the tenant's adult son has since moved into the unit to care for his mother and said that he would pay the rent but has failed to do so.

The landlord testified that in 2012 there was a similar issue with the tenant not paying rent. The landlord applied for and received an Order of Possession. The tenant agreed to make extra rent payments to catch up on those rent arrears and so the landlord

agreed to let the tenant stay and did not enforce that Order of Possession; however, the tenant is now doing the same thing again.

### Analysis

With regard to each party's claims concerning the rent owed. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim, which in this case is the tenants claim that the landlord reduced the rent. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this matter the landlord has testified that the rent is and has always been \$2,000.00. The tenant has testified that the rent was reduced at the end of February, 2014 to \$1,500.00. When it is one person's word against that of the other it gives me no basis to favour one person's version over that of the other. Therefore, without further corroborating evidence to support the tenant's version that the landlord did agree to reduce the rent, the tenant has not meet the burden of proof and I must find that rent for this unit was \$2,000.00 per month.

I refer the parties to Section 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find from the evidence before me that the tenant has failed to pay rent From May 15 to June 15 of \$2,000.00; from June 15 to July 15, of \$2,000.00; from July 15 to August 15 of \$2,000.00 and from August 15 to September 15 of \$2,000.00. However, as the landlord may still be able to re-rent the unit for part of September I

must limit the landlord's claim to \$1,000.00 from August 15 to September 01, 2014. I will allow the landlord to amend the application to include the additional unpaid rent that was due after the Notice was served upon the tenant as the tenant would have known that rent was due on the 15th day of July and August. The landlord is entitled to recover rent arrears to the sum of **\$7,000.00** pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$1,000.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$7,000.00
Less Security Deposit	(-\$1,000.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$6,050.00</b>

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on June 25, 2014; consequently, the effective date of the Notice has been amended to July 05, 2014 pursuant to s. 53 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and I have no evidence before me that the tenant applied to dispute the Notice within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,050.00**. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

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.

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: August 29, 2014

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Residential Tenancy Branch

