



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes : OPR, MNR, MND, FF

### Introduction

This was an application by the landlord seeking an Order of Possession and a monetary order for rental arrears based on a Ten Day Notice to End Tenancy for Unpaid Rent . The landlord is also claiming a monetary order for the unpaid security deposit and the cost of changing the locks.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Preliminary Issues**

#### Order of Possession

At the outset of the hearing, the parties advised that the tenant vacated the rental unit after receiving the 10-Day Notice to End Tenancy for Unpaid Rent. Therefore the landlord's request for an Order of Possession is now moot and need not be determined.

#### Payment Of Security Deposit

As the tenancy ended and the tenant vacated the unit, the payment of a security deposit no longer applies to this tenancy. As this matter is not relevant it need not be determined.

#### Date of 10-Day Notice

Submitted into evidence was a copy of the 10-Day Notice served on the tenant. The landlord is claiming rental arrears for the month of July 2014, but the form was issued on July 1, 2014, prior to the funds actually being in arrears.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

In this instance I find that the tenant was not yet in arrears for rent at the time the Notice was served on July 1, 2014. Given that the Notice was issued prior to the rent being considered in arrears, I find that the tenant was never served with a valid and enforceable 10-Day Notice to End Tenancy for Unpaid Rent.

Based on the above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent is not enforceable.

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

Is the landlord is entitled to monetary compensation for unpaid rent and the cost of changing the locks?

#### Background and Evidence

The landlord testified that, although rent was due on July 1, 2014, he was told by the tenant , on July 1, 2014, that she would not be paying the rent until the following day, which would be after the due date for payment. The landlord testified that this was the reason that the 10-Day Notice to End Tenancy for Unpaid Rent was served on the tenant.

The landlord testified that the tenant moved out of the unit but returned to clean it out on July 7, 2014, at which time the landlord asked the tenant to leave the property. According to the landlord, the tenant called the police.

The tenant testified that she had returned home from work on July 1, 2014, which was a statutory holiday, and found the landlord waiting for her demanding immediate payment of the rent. The tenant testified that she told the landlord that the rent would be paid the following day, after which the landlord gave the tenant a 10-Day Notice to End Tenancy for Unpaid Rent dated July 1, 2014.

The tenant testified that, after this heated confrontation, she decided to move and signed for a new residence on July 4, 2014. The tenant testified that, when she went to finish cleaning out the unit, she was denied access and ordered off the property by the landlord.

The landlord feels that, because the tenant defaulted on the rent and moved out early, he is entitled to be paid rent for July 2014 in the amount of \$600.00 and is entitled to collect the \$300.00 security deposit.

The landlord also seeks reimbursement for two locksets costing \$150.00.

### Analysis

Based on the evidence from the landlord, I find that the tenant was served with an invalid Notice to End Tenancy for Unpaid Rent in person. I find that, despite this fact, the tenant chose to vacate the unit.

I accept both parties' testimony that the tenant was told to leave the property by the landlord and that this occurred on July 7, 2014. I find that, by forbidding the tenant access, the landlord had taken possession of the rental unit before the landlord was legally entitled to do so. I find that this occurred without due process and in violation of the Act.

Section 57(2) of the Act prohibits a landlord from taking actual possession of a rental unit that is occupied by an over-holding tenant unless the landlord has a valid writ of possession issued under the Supreme Court Civil Rules. I find that the landlord did not have a valid writ from the Supreme Court.

In any case, I find that the tenant was not over-holding the rental unit at the time the landlord chose to take possession, because the effective date for ending the tenancy pursuant a valid Ten Day Notice to End Tenancy for Unpaid Rent, would never be before July 11, 2014.

With respect to the landlord's claim for changing the locks, I find that section 25 of the Act places the cost of changing or rekeying locks on the landlord.

Given that the landlord failed to issue a valid Ten Day Notice to End Tenancy for Unpaid Rent and then failed to follow the Act with respect to taking possession of the unit, I find that the landlord's application claiming compensation for the tenant's violations of the Act has no merit.

Accordingly I find that the landlord's application seeking \$600.00 rent, payment of a \$300.00 security deposit and the \$150.00 cost of changing the locks has no merit and must be dismissed.

Accordingly, I hereby dismiss the landlord's application in its entirety without leave to reapply.

**Conclusion**

The landlord is not successful in the application and the claim for monetary compensation is dismissed without 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: September 10, 2014

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Residential Tenancy Branch

