



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Enershore Investments Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – CNR, OLC, LRE, FF

For the landlord – OPR, MNR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent, for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to suspend or set conditions on the landlords' right to enter the rental unit; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

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

At the outset of the hearing the tenant advised that she is in the process of moving from the rental unit. The tenant therefore withdraws their application in its entirety. The hearing continued to deal with the landlords' application.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2013 for a fixed term due to end on September 01, 2014 with the provision to extend the tenancy on a month to month basis. Rent for this unit was \$1,700.00 per month due on the 1<sup>st</sup> of each month. The landlords testified that the tenant did not pay the security or pet deposits. The tenant testified that she did pay \$450.00 towards the security deposit. The parties agreed the landlords did reduce the rent to \$1,200.00 per month from February, 2014.

The landlords testified that the tenant's rent cheque for February was returned due to insufficient funds. The tenant did not pay February's rent by another means and the rent cheque for March was also returned due to insufficient funds. At this point the landlords offered to reduce the tenant's rent to \$1,200.00 as an act of compassion as the tenant was experiencing some financial difficulties. Later in March the tenant paid \$960.00 towards rent for March. The tenant owed \$240.00 for March rent and \$1,200.00 for February's rent.

The landlord testified that in April the tenant only paid \$700.00 leaving an unpaid balance of \$500.00; however, in May the tenant paid \$1,400.00; therefore the credit of \$200.00 was applied to April's rent leaving an unpaid balance of \$300.00 for April. The tenant paid \$1,100.00 in June leaving an unpaid balance of \$100.00 for June. In July, August and September the tenant failed to pay any rent leaving a balance due for these months of \$3,600.00. The balance of unpaid rent is now \$5,440.00 from February to September, 2014. The landlord orally requested to be able to amend their application to include unpaid rent for September, 2014 as the tenant has continued to reside in the rental unit.

The landlord testified that in order to help the tenant out during this difficult time the landlords also gave the tenant some cleaning work in lieu of rent for some of the landlords' other units. The tenant was informed that she would be paid \$17.00 an hour for this work and completed just over 33 hours of work. The landlords have provided a worksheet showing the tenants' cleaning work. The landlords have therefore applied the amount of \$575.00 to the tenant's rent arrears from February to September and seek a Monetary Order for the balance of \$4,865.00.

The landlords seek to recover \$45.00 for two rent cheques that were returned due to insufficient funds in February and March, 2014. The landlords also seek to recover the unpaid security deposit of \$850.00.

The tenant agreed that there is some rent owed to the landlord. The tenant disagreed that the landlords had notified the tenant that she would be paid \$17.00 an hour and testified that for her other cleaning work she is paid \$25.00 an hour and therefore should be paid that from the landlords. The tenant agreed that she did not have an agreement in place for the landlords to pay the tenant \$25.00 an hour for cleaning and therefore the tenant does not dispute that she owes rent of \$4,865.00.

The tenant testified that she withheld her rent at the end of the tenancy as the landlords would not turn the tenant's hotwater back on after the tenant had had the gas reconnected. As the hotwater tank was located in the basement unit the tenant could not get this reconnected without the landlords.

The tenant disputed that she owed \$850.00 for a security deposit. The tenant testified that she paid \$450.00 in cash to the female landlord on October 15, 2013.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.*

I am satisfied with the testimony before me that the tenant owes rent of \$4,865.00. A tenant is not entitled to withhold rent if the landlords have not complied with the Act by ensuring the tenant had the hotwater put back on in her unit after the tenant had settled her gas account. Furthermore, I find the tenant has provided insufficient evidence to show that the landlords agreed to pay the tenant \$25.00 an hour for cleaning services in lieu of rent or that the tenant paid a security deposit of \$450.00 on October 15, 2013. It is therefore my decision that the landlords are entitled to a Monetary Order for **\$4,865.00** pursuant to s. 67 of the Act.

With regard to the landlords' claim to recover \$45.00 for NSF fees for two returned rent cheques in February and March, 2014; I refer the parties to the Residential Tenancy Regulations s. 7 (c) s. 7(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is insufficient evidence to show that the tenancy agreement does provide for an administrative fee for the return of the tenant's rent cheques. Consequently pursuant to s. 7(2)(e) of the regulations I dismiss this section of the landlords' claim for \$45.00.

With regard to the landlords' claim to recover \$850.00 for the security deposit; as explained to the parties during the hearing, a security deposit is an amount held in trust by the landlords until the end of the tenancy. If the tenant has not paid the security deposit within 30 days of the start of the tenancy the landlords' recourse is to serve a tenant with a One Month Notice to End Tenancy for cause based on non-payment of the security or pet deposit. A landlord is not entitled to recover a security deposit. As a Monetary Order at the end of the tenancy if none has been paid by the tenant. This section of the landlords' claim is therefore dismissed.

With regard to the landlords application for an Order of Possession; I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice was served on August 02, 2014. The tenant did file an application to dispute the Notice; however, the tenant did not pay the outstanding rent within five days and the tenant has withdrawn her application for Dispute Resolution at the hearing.

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. As this date has since passed I grant the landlords an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$4,915.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order 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 tenants. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order 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: September 22, 2014

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Residential Tenancy Branch

