



# 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.

Service of the original hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on July 10, 2014 when the landlord applied for a Direct Request Proceeding. At that proceeding the matter was reconvened to a participatory hearing which took place today. The landlord served the tenant with evidence and Notices for the reconvened hearing by registered mail on July 31, 2014. The landlord also amended his application on September 04, 2014. This amended application was served to the tenant by registered mail on September 04, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this month to month tenancy originally started on May 01, 2014; however, a larger unit became available and the tenant moved into the larger unit #8 on May 31, 2014. Rent for this unit is \$580.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$272.50 on May 01, 2014.

The landlord testified that the tenant failed to pay the rent on June 01, 2014 leaving an unpaid balance of \$580.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on June 16, 2014. This was served in person to the tenant and the landlord has provided a proof of service document signed by the tenant acknowledging receipt of the Notice. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 26, 2014. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenant has failed to pay rent for July, August and September, 2014 of \$1,740.00. The landlord has provided documentary evidence showing two rent cheques were returned by the bank due to insufficient funds. The total amount of unpaid rent is now \$2,320.00.

The landlord seeks to recover a loss of revenue for October, 2014 of \$580.00 as the tenant remains in possession of the unit and the landlord will not be able to re-rent the unit for October 01, 2014.

The landlord has applied to retain the tenant's security deposit of \$272.50.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 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 from the evidence before me that there is outstanding rent for June, July, August and September of \$2,320.00. Consequently, it is my decision that the landlord is entitled to recover these amounts and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover a loss of revenue for October, I am satisfied that due to the late time of the month of September that the landlord will be unable to re-rent the unit for October 01, 2014. I refer the parties to the Residential Tenancy Policy Guidelines # 3 which states, in part, that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Consequently I find the Notice was issued in June, 2014. The tenant has remained in the unit past the effective date of the Notice without paying rent and the landlord is therefore entitled to recover a loss of revenue for part of October. As the landlord still has the ability to get the unit re-rented for a period during October in order to attempt to mitigate any loss; I find the landlord is entitled to recover rent from October 01 to October 15, 2014. If the unit does not rent for October 15, 2014 the landlord is at liberty to file an application to recover the balance of rent for October.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$272.50.00 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.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$2,320.00
Loss of Revenue	\$290.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$272.50)
<b>Total amount due to the landlord</b>	<b>\$2,387.50</b>

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 was served on June 16, 2014 and states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy 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. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,387.50** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord, effective two days after service upon the tenant. This Order must be served on the tenant; if the tenant 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 30, 2014

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Residential Tenancy Branch

