



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR FF CNR

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* to cancel a Notice to End Tenancy for unpaid rent dated August 11, 2014.

### **SERVICE:**

Both parties attended and confirmed that the Notice to end Tenancy dated August 11, 2014 and their Applications for Dispute Resolution were served personally. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated August 11, 2014 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Or is the tenant entitled to relief?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on January 1, 2014 for a fixed term until December 31, 2014, rent is \$1000 a month and a security deposit of \$500 was paid on December 17, 2013. The landlord testified that the tenant is in rent

arrears of \$860 (\$430 for each of July and August). They have paid rent in full through the Ministry for September and October 2014 but have never been issued receipts.

The tenants said there was a mix-up because the landlord was not in the country when they needed their "Intent to Rent" form signed to obtain rent payments from the Ministry. They said they gave the landlord post dated cheques for \$1,000 a month to cover the interval and were under the impression that the Ministry was paying him directly after they submitted the form to them. They complained that they have never been issued receipts and the landlord did not dispute this. They also said that the landlord has tried to cash their \$1,000 cheques for September and October although he is being paid by the Ministry before the first of each month. As a result they have incurred NSF fees for they do not get the rent money in their bank account.

When it was pointed out to the landlord that he may have waived his Notice to End Tenancy by accepting subsequent rent without limiting it to 'use and occupancy only' and as a result may have reinstated the tenancy, he started reciting other causes to evict the tenants. I declined to hear this and directed him to section 47 if he wished to issue a one month Notice to End Tenancy for cause. Both parties also wanted to complain about inspection and entry into the suite. I declined to hear this as it was not relevant to the 10 day Notice which is the subject of the dispute. I directed them to section 29 of the Act to inform themselves about the rules for entry.

In evidence are copies of Ministry cheques to the landlord, the Notice to End Tenancy and a letter to the Residential Tenancy Branch which should have been directed to the Ministry regarding the rent issues.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession**

I find that the landlord is not entitled to an Order of Possession. Although there is outstanding rent, the tenant made application pursuant to Section 46 of the Act to set aside the Notice to End a Residential Tenancy within 5 days of its receipt.

The Residential Tenancy Policy Guidelines number 11 states as follows:

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.

- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

I find the landlord waived his right to enforce his Notice to End Tenancy by accepting rent of \$1000 for each of September and October and not giving the tenants any receipt limiting its acceptance to “use and occupancy only”. I find the tenants were under the impression that it was a mix-up with the Ministry which was being corrected and did not expect their tenancy to be ending. Therefore I set aside the Notice to End Tenancy dated August 11, 2014. The tenancy is reinstated.

#### Monetary Order

I find that there are rental arrears in the amount of \$860 representing rental arrears for July and August 2014 when the Ministry supplied only cheques for \$570 for each month. Therefore, I find the landlord entitled to a monetary order for \$860 which the tenants may be able to forward to the Ministry.

I find the tenants have a valid issue concerning the landlord continuing to try to cash their post dated cheques for \$1,000 as well as collecting \$1,000 directly from the Ministry for rent. They may have a valid claim for a monetary order against the landlord for NSF fees due to his illegal practice. The landlord may be new to this country but ignorance of the law is no excuse; if he is renting to tenants he must abide by the provisions of the Residential Tenancy Act, Regulations and Policy Guidelines, all of which are available online. The landlord must return the tenants post dated cheques immediately.

#### **Conclusion:**

I find the landlord is entitled to a Monetary Order as calculated below and to recover filing fees paid for this application. I find the landlord not entitled to an Order of Possession. The Notice to End Tenancy dated August 11, 2014 is set aside and cancelled. The tenancy is reinstated and continues.

#### Calculation of Monetary Award:

Rent arrears for July and August 2014	860.00
Filing fee	50.00
Total Monetary Order to Landlord	<b>910.00</b>

The tenants may have a valid claim for a monetary order against the landlord but they provided insufficient evidence to support any charges they incurred. I dismiss this portion of their Application and give them leave to reapply. No filing fee was involved.

**I HEREBY ORDER the landlord to return any post dated cheques in his possession forthwith to the tenants and to cease trying to cash them. I HEREBY ORDER the parties to abide by the provisions in section 29 of the Act regarding any entry by the landlord or his agents.**

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: October 15, 2014

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Residential Tenancy Branch

