



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for an Order of Possession for cause; for a Monetary Order for unpaid rent; 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 hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served in person by the landlords on December 12, 2014.

The landlords appeared, gave sworn testimony, were 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

- 1) Are the landlords entitled to an Order of Possession for unpaid rent?
- 2) Are the landlords entitled to an Order of Possession for cause?
- 3) Are the landlords entitled to a Monetary Order to recover unpaid rent?
- 4) Are the landlords permitted to keep all or part of the security deposit?

### Background and Evidence

The landlord AC testified that this month to month tenancy started on September 01, 2014. Rent for this unit is \$550.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$250.00 on September 01, 2014. A copy of the tenancy agreement has been

provided in documentary evidence. AC testified that they rent the entire house from their landlord and live upstairs and rented the lower suite to this tenant effectively becoming this tenant's landlords.

AC testified that the tenant failed to pay the rent for December, 2014 of \$550.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 04, 2014. This was served in person to the tenant on that date. The Notice informed the tenant that the tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 14, 2014. The tenant did not pay the outstanding rent or file an application to dispute the Notice.

The landlords have applied to retain the tenant's security deposit of \$250.00 in partial payment of the rent arrears and a Monetary Order for the balance. The landlords have also applied for an Order of Possession to take effect as soon as possible.

AC testified that the tenant was also served with a One Month Notice to End Tenancy for unpaid rent. This Notice was served in person on December 02, 2014. The Notice has an effective date of January 02, 2014 and gave three reasons to end the tenancy:

- *The tenant is repeatedly late paying rent.*
- *The tenant or a person permitted on the residential property by the tenant has*  
*(i)significantly interfered with or unreasonably disturbed another occupant or*  
*the landlord of the residential property,*
- *The tenant has assigned or sublet the rental unit without the landlords' written consent*

AC testified that the tenant has been late with the rent, has been verbally aggressive towards the landlords and the landlords made an error when renting the lower unit to the tenant without the written consent of their landlord.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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 undisputed evidence before me that there is outstanding rent for December, 2014 of \$550.00. Consequently, it is my decision that the landlords are entitled to recover this amount from the tenant and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$250.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

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

Outstanding rent	\$550.00
Filing fee	\$50.00
Less security deposit	(-\$250.00)
<b>Total amount due to the landlords</b>	<b>\$350.00</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 states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on December 04, 2014. There is no evidence to show that the tenant paid any of the outstanding rent within five days nor did the tenant 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 upon the tenant, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlords' claim for an Order of Possession for cause.

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 **\$350.00** pursuant to s. 67 and 72(1) of the *Act*. 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 landlords effective **two days after service upon 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: December 30, 2014

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Residential Tenancy Branch

