



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF  
                                CNR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application. The tenant's amended application seeks an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite making an application and despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 19, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord. The landlord testified that the landlord served the tenant on that date and in that manner and provided a tracking number assigned by Canada Post and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The landlord also had a witness prepared to testify however the witness was not called and did not attend the hearing.

Since the tenant has not attended the hearing, the tenant's application is hereby dismissed without leave to reapply.

All evidence provided by the landlord is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014. No written tenancy agreement exists, however rent in the amount of \$750.00 per month is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant failed to pay rent in full for the month of October, 2014 leaving a balance of \$300.00 outstanding. The tenant further failed to pay any rent for the month of November, 2014. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 5, 2014 by leaving it on the counter in the kitchen when the landlord was at the rental unit. A copy of the notice has been provided and it is dated November 5, 2014 and contains an expected date of vacancy of November 15, 2014 for unpaid rent in the amount of \$1,050.00 that was due on November 1, 2014. Both pages of the 2-page form have been provided.

The landlord has not collected any rent since the issuance of the notice and now December's rent is overdue. The tenant has moved some belongings out of the rental unit, but the landlord has not received the keys. The landlord also testified that by the time the move-out condition inspection is completed and due to the time of year and other issues that may arise with moving out of the rental unit, the landlord will not be able to re-rent the unit sooner than January 1, 2015 and the landlord claims December's rent as loss of revenue in the amount of \$750.00.

The landlord claims an Order of Possession, a monetary for unpaid rent for October, 2014 in the amount of \$300.00, for November, 2014 in the amount of \$750.00, and December, 2014 in the amount of \$750.00, and an order permitting the landlord to keep the security deposit in partial satisfaction of the unpaid rent.

### Analysis

Having heard the testimony of the landlord, and considering the evidentiary material provided, I am satisfied that the tenant has received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I have reviewed the notice and find that it is in the approved form and it contains information required by the *Residential Tenancy Act*. The *Act* also states that incorrect effective dates contained in such a notice are changed to the nearest date that complies with the *Act*, and I find that by leaving it in a conspicuous place, the tenant is deemed to have received it on November 8, 2014 and the effective date of vacancy is therefore 10 days later, or November 18, 2014. The tenant has not paid the rent and having dismissed the tenant's application disputing the notice, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

I accept the testimony of the landlord that due to the fact that the tenant must be served with the Order of Possession, and by the time the rental unit is ready to re-rent, the landlord has lost revenue for the month of December, 2014 and won't be able to re-rent before January 1, 2015. Therefore, I am satisfied that the landlord has established a monetary claim for unpaid rent for the months of October to December, 2014 in the amount of \$1,800.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$400.00 security deposit in partial satisfaction of the claim and I hereby grant a monetary order in favour of the landlord for the difference in the amount of \$1,450.00.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I hereby order the landlord to keep the \$400.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,450.00.

These orders are final and binding and may be enforced.

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 11, 2014

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Residential Tenancy Branch

