



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing, the tenant applied to adjourn the hearing in order to provide evidentiary material that was not available in time for the hearing, which consists of emails of a character reference to prove that rent has been paid and that the suite is illegal, and that the tenant should get a monetary order as against the landlord. The landlord opposed the adjournment. I am not satisfied that character references will prove that rent was paid, and the tenant has not made a monetary claim as against the landlord. The application for adjournment was denied.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for electronic transfer fees and costs associated with preparation for this hearing?
- 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 fixed term tenancy began on September 15, 2014 and expires on August 31, 2015. The tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month plus half of the hydro bills and \$26.00 per month for internet. On September 5, 2014 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. A copy of the tenancy agreement has been provided which contains 2 Addendums.

The landlord further testified that the tenant is currently in arrears of rent the amount of \$800.00 for the month of December, 2014 in addition to a \$1.00 transaction fee for November's rent, being a fee that the landlord told the tenant was required for paying rent electronically. On December 3, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. The notice is dated December 2, 2014 and contains an expected date of vacancy of December 12, 2014 for unpaid rent in the amount of \$800.00 that was due on December 1, 2014 and \$217.00 for utilities, late fees and electronic transfer fees following written demand made on November 21, 2014 and November 14, 2014. The landlord testified that the tenant was given a letter in person on November 14, 2014 requesting payment and another on November 21, 2014, but the tenant has not paid.

The landlord also personally served the tenant with a 1 Month Notice to End Tenancy for Cause on November 9, 2014. A copy of that notice has been provided and it is dated November 9, 2014 and contains an expected date of vacancy of December 31, 2014. The reasons for issuing the notice are:

- Tenant has been repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - Put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to
  - Damage the landlord's property;
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;

- Tenant has not done required repairs of damage to the unit/site.

The landlord further testified that the tenant has not served the landlord with an application for dispute resolution disputing either notice.

The landlord also testified that a move-in condition inspection report was completed in the presence of the tenant on September 15, 2014. The baseboards were damaged during the move-in after the report had been completed; the tenant showed it to the landlord and said that a dog belonging to a friend had chewed it. The tenant has not repaired the baseboards and the landlord received a quote for the repair at \$300.00, which has been provided for this hearing in the form of an email to the landlord..

The tenant paid the internet in October, 2014 only, and the landlord claims \$26.00 per month for each of November and December, 2014, and the tenant has never paid any hydro. Also, the dump fee is \$10.00 per load, and the tenant has refused to move a big bag of garbage. The landlord claims that amount from the tenant.

The landlord also claims 3 additional months of rent because of the fixed term. The landlord has been a landlord for about 10 years and has noticed a trend that this time of year the rental unit is difficult to re-rent.

The landlord claims \$800.00 for December's rent, \$2,400.00 for 3 additional months of rent, \$165.00 for unpaid hydro, \$52.00 for internet fees, \$25.00 for late fees, \$1.00 for e-transfer fees, \$300.00 for replacing the damaged baseboards, \$10.00 for a dump fee, \$13.44 for preparing flash drives for this hearing, registered mail costs and \$50.00 for recovery of the filing fee.

The tenant testified that 2 friends helped move in and the landlord didn't have a problem with the dogs. The molding was chewed up and the landlord told the tenant that she had extra molding and would put it in, but never did and never gave it to the tenant.

The tenant also testified that she refused to pay the internet as requested by the landlord because there were no additional usage charges to the landlord and nothing in the tenancy agreement. The tenant also asked the landlord for proof of consumption of the hydro, but the landlord never provided it.

The landlord told the tenant that the tenant left the garbage bag in the wrong bag and took it out of the garbage can, put it in front of the tenant's door and left a letter.

The tenant was told to move by By-law services in a letter dated December 7, 2014 which states that the office had recently received complaints with respect to the property because the premises has a secondary suite occupied by tenants. The fire inspector and a by-law officer inspected the rental unit, and said that the home was zoned single family housing. In order to have secondary suites, an application must be completed, and a letter was sent to the landlord requiring her to take immediate steps to have the rental unit decommissioned. The landlord is trying to collect future rent when the landlord can't rent the rental unit at all. The tenant signed a lease for a year and can't

stay. The tenant did not pay rent because the rental unit is illegal. Further the landlord gave the 1 Month Notice to End Tenancy for Cause the same day the landlord did an inspection, after the tenant had asked for proof of hydro consumption.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent even if the landlord has not complied with the *Act*. The *Act* also states that a tenant must pay the rent in full or dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of service. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. The *Act* also states that if a tenant does not dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, although cannot find in the circumstances that the landlord has established any of the reasons for issuing the notice, the tenant did not dispute either notice and did not pay the rent. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession on 2 days notice to the tenant, because the effective date of vacancy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has already passed.

With respect to the landlord's claim for a monetary order for unpaid rent, I find that the landlord has established a claim in the amount of \$800.00 for December's rent. The landlord has not satisfied me that the landlord will be able to re-rent the rental unit and the landlord's claim for additional months is hereby dismissed. The *Act* permits a landlord to claim late fees to a maximum of \$25.00 if it is contained I the tenancy agreement, and I find that it is.

With respect to the landlord's claim for damages, a tenant is required to repair any damage caused by the tenant before the end of the tenancy. Since the tenancy has not yet ended, the landlord's application is premature and is hereby dismissed with leave to reapply.

With respect to unpaid utilities, I have reviewed the tenancy agreement, and there is no mention of e-transfer fees or internet. The Addendum also states: "Also, landlord will be responsible for electrical payments to the amount of \$200.00 per bill (every 2 month). The tenant(s) will share electrical bill responsibility, wherein any amount over this amount will be the responsibility of the tenant(s) to pay, including any accruing interest from nonpayment." The only bill that the landlord has provided is dated November 14, 2014 in the amount of \$330.84. Therefore, I find that the landlord has established a claim in the amount of \$130.84.

With respect to costs for registered mail and flash drives, the *Act* permits a claim for recovery of the filing fee but not for costs associated with preparing for a hearing.

In summary, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant, a monetary order in the amount of \$800.00 for unpaid rent, \$25.00

for late fees, and \$130.84 for hydro. Since the landlord has been partially successful with the application, the landlord is entitled to recovery of the \$50.00 filing fee. I order the landlord to keep the security deposit of \$400.00 in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$605.84.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$400.00 security deposit 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 \$605.84.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The balance of the landlord's application is hereby dismissed without leave to reapply.

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 28, 2014

---

Residential Tenancy Branch

