



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sussex Villa  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the call, however the tenant was not accompanied by an interpreter and it was immediately apparent that the hearing could not continue in the absence of an interpreter. Also, the landlord's agent advised that documents had been submitted to the Residential Tenancy Branch as evidence to support the landlord's application, but none has been received by me prior to the commencement of the hearing.

The hearing was adjourned to allow the landlord's agent to determine and provide whatever evidence was previously provided, and the tenant was ordered to obtain an interpreter to join the conference call hearing to ensure that the principles of natural justice are met.

The parties appeared on the second day scheduled and the tenant was accompanied by an interpreter. The parties each gave affirmed testimony and were given the opportunity question each other. The interpreter was affirmed to well and truly interpret the proceedings.

During the course of the hearing the landlord's agent also stated that English is not her first language, and the testimony was difficult to understand. It was also difficult to determine whether or not the landlord's agent understood the questions being asked of her.

The Residential Tenancy Branch was provided with evidentiary material by the landlord on December 12, 2014, however the landlord's agent advised that none of the evidence was provided to the tenant, and therefore, I decline to consider any of it. The testimony of the parties 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 or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 1, 2014 and expired on October 31, 2014, and then reverted to a month-to-month tenancy. Rent in the amount of \$825.00 per month is payable on the 1<sup>st</sup> day of each month and there are currently no rental arrears, although the tenant owes the landlord \$100.00 for late fees. She stated that the tenancy agreement does not provide for late fees, but that was an oversight by the landlord, and the landlord collects that amount from all tenants. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$412.50 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 7, 2014 by posting it to the door of the rental unit. The reason for issuing the notice is for unpaid rent in the amount of \$825.00 that was due on November 1, 2014. She stated that the notice is dated November 7, 2014 and contains an expected date of vacancy of November 12, 2014. The tenant paid the rent in full on November 18, 2014 but did not pay the late fees. The landlord issued a receipt that had written on it, "For Use and Occupancy Only." The tenant has been repeatedly late paying rent.

The landlord claims an Order of Possession, a monetary order in the amount of \$100.00 for 4 months of late fees, and recovery of the \$50.00 filing fee.

The tenant testified that he had a problem with the landlord regarding a maintenance issue and made an Application for Dispute Resolution. The landlord was ordered to complete some maintenance to the rental unit by November 5, 2014.

The tenant also testified that he is confused about who to pay rent to and always pays in cash but sometimes no one is at the landlord's office to collect it.

### Analysis

The Residential Tenancy Branch Rules of Procedure requires all parties to provide any evidence they intend to rely on at the hearing upon the other party, and the Rules go into great detail of how that is to be done. Even where a party already has a copy of a document, if a party intends to rely on it at a hearing, the party must re-serve it with all evidence. The landlord advised that evidence was provided to the Residential Tenancy Branch prior to the first hearing, and then provided more evidence between the two hearing dates, but did not provide any of it to the tenant. Therefore, I cannot consider it.

The landlord's agent testified that the tenant paid the rent in full after the effective date of vacancy that was written on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a receipt was issued that had clearly marked on it, "For Use and Occupancy Only," however I have no evidence of that. Having given the landlord sufficient time to provide evidentiary material in accordance with the Rules, and the landlord having failed to do that, I find that it is very possible that the landlord has reinstated the tenancy.

Further, I am not satisfied that the landlord has established that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*. In the absence of the evidence, the landlord's application for an Order of Possession cannot succeed.

With respect to the landlord's application for a monetary order, the landlord's agent testified that the tenant has paid the rent and there are currently no rental arrears. Therefore, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed.

The landlord's agent also testified that the tenancy agreement does not provide for late fees, and unless a tenancy agreement specifically states that late payments of rent are subject to a late fee, the landlord cannot claim it. Therefore, the landlord's application for late fees is hereby dismissed without leave to reapply.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

### Conclusion

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

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 15, 2014

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Residential Tenancy Branch

