



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – CNC, FF

For the landlord – OPC, MNR, FF, ET

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for cause (the Notice) and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; or an Order of Possession based on an early end to tenancy; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew their application for an early end to tenancy.

The tenant and landlord's agent attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Notice set aside?
- Is the landlord entitled to an Order of Possession based on the reason given on the Notice?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this fixed term tenancy started on March 01, 2014 and reverted to a month to month tenancy on September, 01, 2014. Rent for this unit is \$2,500.00 a month due on the 1<sup>st</sup> of each month in advance.

The landlord testified that the tenant has been repeatedly late paying rent. Rent was paid late in March, June, July, November and December, 2014 and rent for January, 2015 has not yet been paid. The landlord referred to their documentary evidence in the form of the rent ledger showing that rent was paid on March 26, 2014; June 16, 2014; July 31, 2014; November 28, 2014 and only \$1,25.000 was paid on December 16, 2014. The balance of rent for December, 2014 of \$1,250.00 has not been paid and neither has rent for January, 2015 of \$2,500.00.

The landlord testified that the Notice was served upon the tenant on December 23, 2014 by registered mail. This Notice provides the reason to end the tenancy as repeated late payment of rent and has an effective date of January 31, 2015. The landlord seeks an Order of Possession based on the reason given on the Notice for January 31, 2015.

The landlord seeks a Monetary Order to recover the unpaid rent of \$3,750.00. The landlord testified that the tenant's rent cheque for November was returned due to

insufficient funds. The landlord requested the amount of \$25.00 to be awarded for fees charged by the landlord's bank. The landlord also seeks to recover the \$50.00 filing fee.

The tenant agreed that they had been late with the rent as stated by the landlord. The tenant testified that when they first moved into the unit they had experienced some fraudulent activity on their bank account so made an agreement with the landlord that the arrears at that time would be paid off by the middle of March. The tenant testified that it took a little longer and that's why rent was not paid until March 26, 2014.

The tenant testified that in June, 2014 they had a payment go through their bank account that should not have gone through and this left them in difficulty again with the rent cheque. In July, 2014 the tenant was in hospital having major surgery and the rent was paid late on that occasion. In November, 2014 there were problems with extra deductions being made from their wages and this left them short of the rent for that month. The tenant referred to an email she sent the landlord concerning December's rent and the arrangements she made to get this paid in full. January's rent was to be paid by the end of the month.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* 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 refer the parties to the Residential Tenancy Policy Guidelines #38 which states, in part, that the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

I am satisfied that the tenants have made late payments on five occasions in 2014 and have failed to pay all the rent owed for December, 2014 and for January, 2014 on the day it was due and payable to the landlord. Consequently, it is my decision that the landlord has established a claim for an Order of Possession based on this reason pursuant to s. 55 of the *Act*.

I am satisfied with the undisputed evidence before me that there is outstanding rent for December, 2014 of \$1,250.00 and unpaid rent for January, 2015 of \$2,500.00. Consequently, the landlord has established a claim to recover the unpaid rent and a Monetary Order has been issued for the amount of **\$3,750.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$25.00 for the return of the tenant's rent cheque in November, 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee of \$25.00 for the return of the tenant's cheque by a financial institution. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$25.00** for the return of November's rent cheque.

As the landlords' claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,825.00** pursuant to s. 67 and 72(1) of the *Act*. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on January 31, 2015. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is 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: January 28, 2015

---

Residential Tenancy Branch

