



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Trophy Enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF  
CNR, MNR, MNDC, OLC, RR, O

### Introduction

This hearing was convened by way of conference call having been adjourned at the request of the tenant on May 7, 2015.

The landlord and the tenant made applications for dispute resolution that have been joined to be heard together.

The landlord applied for an Order of Possession and a monetary order for unpaid rent or utilities by way of the Direct Request Process, which was scheduled to a participatory hearing, and then filed an amended application increasing the amount of the monetary claim for an additional month of rent and seeking an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant amended the application to change the name of the landlord and adding a request for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The landlord was represented at the hearing by an agent who gave affirmed testimony. The tenant also attended and again requested an adjournment which was opposed by the landlord's agent. I found that the request would prejudice the landlord and the request was denied. The tenant continued to argue that another 2 week adjournment was necessary, refused to listen to instructions, and continued to demand an

adjournment. The tenant rudely left the conference call hearing 15 minutes into the hearing while the landlord's agent was giving oral testimony.

The landlord's agent testified that the amended application of the landlord was served on the tenant on April 17, 2015 by registered mail and orally provided a tracking number. The landlord was ordered to provide by facsimile after the hearing proof of that mailing, and has provided a copy of a Canada Post cash register receipt as well as a Registered Domestic Customer Receipt both containing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also testified that the Tenant's Application for Dispute Resolution and amended application were received by the landlord.

The tenant did not remain in attendance or take part in the proceedings, and I dismiss the tenant's application without leave to reapply.

All evidence and testimony of the landlord's agent has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- 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?
- 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?
- 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's agent testified that this fixed-term tenancy began on September 1, 2014 and expires on August 31, 2015, and the tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 1<sup>st</sup> day of each month. On August 11, 2014 the landlord collected a security deposit from the tenant in the amount of \$450.00 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.

The landlord's agent further testified that the tenant did not pay any rent for the month of April, 2015 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 2, 2015. The tenant did not answer the door so the landlord's agent taped the notice to the door of the rental unit with another person in attendance to witness it. A copy of the notice has been provided and it is dated April 2, 2015 and contains an effective date of vacancy of April 15, 2015 for unpaid rent in the amount of \$900.00 that was due on April 1, 2015. Also provided is a Proof of Service signed by the landlord's agent and the witness. The tenant has not paid any rent since the issuance of the notice, and now May's rent is also in arrears.

The landlord seeks an Order of Possession, a monetary order for \$1,800.00, recovery of the \$50.00 filing fee, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice, which must be no less than 10 days after the tenant is served, or deemed served. In this case, the landlord's agent testified that it was posted to the door of the rental unit on April 2, 2015, which is deemed to have been served 3 days later, or April 5, 2015. The tenant filed an application for dispute resolution on March 30, 2015 and then amended the application requesting an order cancelling the notice on April 16, 2015, which is beyond the 5 days permitted under the *Act*. The tenant has not paid the rent or rent for the following month. 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.

With respect to the landlord's monetary claim, I accept the testimony of the landlord's agent that the tenant paid no rent for April or for May, 2015 and is currently in arrears of rent the sum of \$1,800.00, and I find that the landlord has established that claim.

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

I hereby order the landlord to keep the \$450.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the balance totalling \$1,400.00.

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 \$450.00 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 \$1,400.00.

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: May 20, 2015

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Residential Tenancy Branch

