



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46 or 47 and 55;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

The tenant did not attend. The landlord gave sworn testimony that the Notice to end Tenancy dated April 10, 2015 was served on the tenant's door and the Application for Dispute Resolution by registered mail. It was verified online as successfully delivered. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated April 10, 2015 for unpaid rent and another dated April 10, 2015 for cause. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

The tenant did not attend although served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord testified that tenancy commenced on March 1, 2015, on a fixed term lease to expire on February 29, 2016, rent was \$840 a month including parking and a security deposit of \$410 was paid. The landlord testified that the tenant texted they were moving out on May 25, 2015 and she subsequently checked and all their furniture was gone. She claims \$20 owed for April rent, \$50 late fee, \$840 owed for May rent plus \$300 for administrative costs for early termination of the lease as

provided in paragraph 2 of the lease. The Notice to End Tenancy for cause was due to the tenant's dog barking by day and night and disturbing the peaceful enjoyment and health of other residents and to a breach of the lease by the tenants smoking in the unit contrary to the provisions of the lease. Although the tenants have vacated, the landlord requests an Order of Possession for legal reasons and a monetary order. She requests to retain the security deposit to offset the amount owing.

In evidence are the two Notices to End Tenancy, the lease agreement, proof of service, registered receipts, a rent cheque for April showing an insufficient amount, letters of complaint from other tenants and warning letters to this tenant regarding their breaches of lease. The tenant submitted no documents in dispute.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession**

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

#### **Monetary Order**

I find that there are rental arrears in the amount of \$860 representing rental arrears for April and May 2015. I find the landlord entitled to only a \$25 late charge in accordance with Residential Tenancy Regulation 7(1) (d) and (2), notwithstanding the provision in their lease as section 5 of the Act provides the parties cannot contract out of the provisions of the Act. I find the landlord also entitled to \$300 liquidated damages as compensation for costs involved in re-renting due to the breach of the fixed term lease. I find the landlord entitled to retain the security deposit to offset the amount owing.

### **Conclusion:**

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

#### **Calculation of Monetary Award:**

Rent arrears April and May 2015(\$20+25+840)	885.00
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Liquidated damages for costs	300.00
Filing fee	50.00
Less security deposit	-410.00
Total Monetary Order to Landlord	825.00

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: June 09, 2015

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Residential Tenancy Branch

