



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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, 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 parties attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlord applied to amend the application to correct the spelling of the tenant's name. The tenant did not object to the amendment, and the style of cause has been amended accordingly.

### Issue(s) to be Decided

- 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?
- 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 the current owner purchased the rental building in August, 2013 and the tenant was already a tenant on a month-to-month basis and still resides in the rental unit. Rent in the amount of \$575.00 per month is payable on the 1<sup>st</sup> day of each month. The landlord is not certain how much security deposit was collected from the tenant by the previous landlord, and there is no written tenancy agreement. The landlord is not the owner, but collects rent and manages the complex for the owner.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$1,150.00 for the months of May and June, 2015. The tenant was paying by post-dated cheques, but they ran out and the tenant was not at the rental unit for all of May or the first half of June. The landlord received post-dated cheques for January, February and March, 2015 from the tenant but not for April. The landlord went to the rental unit and the tenant gave a cheque for April only, not for May or June.

On May 2, 2015 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent or Utilities by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated May 2, 2015 and contains an expected date of vacancy of May 13, 2015 for unpaid rent in the amount of \$575.00 that was due on May 1, 2015. The tenant has not paid the rent and the landlord has not been served with an application for dispute resolution disputing the notice.

**The tenant** testified that he moved in on May 15, 2011 and paid half a month's rent for that first month. Rent has always been \$575.00 per month.

The tenant further testified that he gave the landlord 5 post-dated cheques in January, 2015 but typically gives 6 months of cheques at one time. The tenant didn't dispute the notice given by the landlord because he didn't receive it until his return in June. The tenant contacted the landlord who told the tenant to talk to the owner. The owner told the tenant that he wanted the tenant out but didn't give a reason other than to say that he wanted the rental unit back. The tenant tried to pay but the landlord refused to accept the rent.

The parties had attended a dispute resolution hearing in January, 2015 wherein the landlord had applied to increase the rent, but was not successful, and the tenant finds it to be more than a coincidence that when the tenant was away the landlord tried to evict. The tenant claims that this is a fraudulent claim. At the end of April, 2015 the tenant went away and returned the first week of June, 2015. The tenant checked his voice mail regularly and there were no messages from the landlord. If the tenant knew the landlord didn't have a cheque for May the tenant would have deposited the money directly into the landlord's bank account.

### 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, in which case the notice is of no effect, or dispute the notice within that 5 day period. 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 from the date of service or deemed service. The *Act* also states that a notice posted to a conspicuous place is deemed to have been served 3 days later.

In this case, the landlord testified that the notice was posted to the door of the rental unit on May 2, 2015, which is deemed to have been served on May 5, 2015. The tenant claims that the landlord has been fraudulent after an unsuccessful application to increase rent, but I see no evidence of that. I accept that the tenant offered to pay the rent when he received the notice and the landlord refused it, but by then the landlord was owed 2 month's rent. Although a landlord should never refuse rent money, I do not find it to be fraudulent. The tenant didn't dispute the notice and didn't pay the rent in full by May 10, 2015. The tenant also testified that he checked his voice mail messages regularly having been away for an extended period of time, but also ought to have checked his bank account. The landlord didn't receive the rent within 5 days, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The effective date of vacancy has already passed and I find that the landlord is entitled under the *Act* to an Order of Possession on 2 days notice to the tenant.

I am also satisfied that the landlord has established a monetary claim as against the tenant for unpaid rent totalling \$1,150.00 for the months of May and June, 2015.

Since neither party has provided any testimony of how much money the landlord collected for the security deposit, I dismiss the landlord's application to keep it. Normally it would be set off from the amount of rent owed to the landlord, however I order the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*; the landlord must return it in full to the tenant within 15 days of the later of the date the tenant moves out of the rental unit or the date the landlord receives the tenant's forwarding address in writing, or must make an application to keep it within that 15 day period.

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

### 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 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 \$1,200.00.

The landlord's application to keep the security deposit is hereby dismissed, with 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: June 26, 2015

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Residential Tenancy Branch

