



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1879707 AB Ltd. c/o Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **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.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord's agent testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on August 16, 2016 and has provided a copy of a Registered Domestic Customer Receipt stamped by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence has been reviewed and 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?
- 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's agent testified that the landlord purchased the rental complex from a foreclosure sale and does not know when the tenant moved into the rental unit. A tenancy agreement was not prepared, however an application to rent has been provided. Rent in the amount of \$595.00 per month is payable on the 1<sup>st</sup> day of each month, on a month-to-month basis. The landlord's agent assumes that half a month's rent was collected from the tenant for a security deposit at the beginning of the tenancy, and the landlord believes that \$297.50 is currently held in trust. No pet damage deposit was collected. The rental unit is an apartment in a complex containing 24 rental units, and the landlord's agent does not reside there.

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 July 15, 2016 by posting it to the door of the rental unit. A copy has been provided and it is dated July 15, 2016 and contains an effective date of vacancy of July 29, 2016 for \$595.00 unpaid rent that was due on July 1, 2016. A Proof of Service document has also been provided for this hearing. The landlord's agent testified that the tenant hasn't paid any rent for June, July, August or September, 2016 and has no knowledge of why the notice does not include June's rent. The tenant has not paid any rent since the issuance of the notice and has not served the landlord with an application for dispute resolution disputing the notice.

The landlord's agent went to the rental unit on September 18, 2016 and found the rental unit had fire damage in the kitchen. The insurance adjuster and restoration company were called, and the damages are extensive. The tenant was not present. Due to the possibility of asbestos, the rental unit cannot be entered or re-rented until the restoration work is completed.

The landlord has also provided a Monetary Order Worksheet setting out the following claims:

- \$595.00 for June 2016 rent;
- \$595.00 for July 2016 rent;
- \$595.00 for Aug 2016 rent;
- \$45.00 for 3 months laundry; and
- \$75.00 for 3 months NSF charges.

The landlord's agent has no evidence or knowledge of the laundry claim or NSF charges and withdraws that portion of the application.

The landlord claims an Order of Possession for unpaid rent, a monetary order for unpaid rent, and for an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, as well as recovery of the \$100.00 filing fee.

### 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 by filing an application for dispute resolution and serving the landlord. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord's agent testified that the rent has not been paid in full and the tenant has not served the landlord with an application for dispute resolution. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The notice to end the tenancy does not mention unpaid rent for the month of June, 2016, and I have no evidence to satisfy me that the tenant didn't pay June's rent. The landlord's agent also testified that the rental unit is not habitable, and he found the fire damage in September, 2016, and therefore I am not satisfied that the tenant should pay rent for October, 2016. I am satisfied, however, that the tenant hasn't paid any rent for July, August or September, 2016, and the landlord has established a claim of \$1,785.00.

No evidence has been provided with respect to laundry costs or NSF charges, and I dismiss that portion of the landlord's application.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I hereby order the landlord to keep the \$297.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,587.50.

### 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 order the landlord to keep the \$297.50 security deposit in partial satisfaction of the claim, 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 \$1,587.50.

This order is 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: October 06, 2016

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Residential Tenancy Branch

