



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF, O  
CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; 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 tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing, accompanied by a person to assist the landlord whose first language is not English. The landlord gave affirmed testimony and had one witness, but that person did not testify.

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 has provided a copy of a Canada Post cash register receipt dated September 13, 2016 as well as a Registered Domestic Customer Receipt, 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.

Since the tenant has not attended the hearing, I dismiss the tenant's application without leave to reapply.

### 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 damage to the unit, site or property?
- 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 this month-to-month tenancy began on August 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord, and although the tenant was supposed to pay half the rent, no other deposits were collected by the landlord. The rental unit is a suite in a building that contains other suites as well as businesses, and a copy of the tenancy agreement has been provided.

The landlord attended the rental unit to collect rent on September 1, 2016 and the tenant said that he wasn't going to pay it. The landlord then prepared a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided, and it was posted to the door of the rental unit on September 1, 2016. It is dated September 1, 2016 and contains an effective date of vacancy of September 10, 2016 for unpaid rent in the amount of \$800.00 that was due on September 1, 2016. The tenant has not paid any rent since the issuance of the notice, and the landlord seeks an Order of Possession as well as a monetary order for unpaid rent for September, October and November, 2016.

The landlord further testified that the tenant has left damages to the rental unit and has provided photographs for this hearing. The landlord does not know what the cost will be to repair the damages.

### Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in

favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form. Having dismissed the tenant's application, I hereby grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The landlord has not provided any evidence of what damage may exist at the end of the tenancy, and the *Act* requires a tenant to leave a rental unit at the end of a tenancy reasonably clean and undamaged. The tenant still resides in the rental unit, and I find that the landlord's claim in this regard is premature. Therefore, I dismiss the landlord's claim for monetary compensation for damages with leave to reapply.

I accept the undisputed testimony of the landlord that the tenant hasn't paid any rent for September, 2016 or for any month there after, and I am satisfied that the landlord has established unpaid rent in the amount of \$1,600.00 for September and October. However, I have no evidence before me to satisfy me that the landlord could not re-rent the rental unit for some time in November, 2016, considering today is the first day of the month. Therefore, I dismiss the landlord's claim for unpaid rent for November, 2016, and any loss of rental revenue, with leave to reapply.

Having found that the landlord is owed \$1,600.00 for unpaid rent, I order the landlord to keep the \$200.00 security deposit in partial satisfaction of the claim. Also, since the landlord has been successful with the application the landlord is entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,500.00.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent for November, 2016 and for loss of rental revenue is hereby dismissed with leave to reapply.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

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 \$200.00 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 \$1,500.00.

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: November 01, 2016

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Residential Tenancy Branch