



# 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 in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord testifies that the tenant was served a copy of the hearing documents by posting them to the tenant's door on January 06, 2012.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

Both parties testify that this month to month tenancy started on May 01, 2011. Rent for this unit is \$869.00 per month and is due on the first day of each month in advance. The tenant paid security deposit of \$530.00 on August 01, 2009.

The landlord testifies that the tenant has been repeatedly late paying his rent and this is an ongoing problem. The landlord states they are a non profit society and can no longer carry the tenant's debit. The landlord testifies that the tenant has agreed to repayment plans but has failed to adhere to these payment arrangements. The landlord testifies that the tenant owes \$4,763.91 in unpaid rent and a 10 Day Notice to End Tenancy was served upon the tenant in person on December 14, 2011. This Notice has an effective date of December 23, 2011 and informed the tenant that he had five days to pay the outstanding rent or dispute the Notice.

The landlord testifies that the tenant paid \$3,000.00 on January 20, 2012 but as this was paid by a third party cheque the landlord is unsure at this point if the cheque has cleared at the bank. The landlord agrees that they did not put anything in writing to the tenant that this payment was accepted for use and occupancy only.

The tenant agrees that he does owe rent to the landlord but disputes the amount owed as he states he now only owes \$1,763.92 as the cheque for \$3,000.00 will be honoured at the bank. The tenant testifies that he was worked hard to stick to the payment arrangements but had additional expense which resulted in the tenant not being able to pay his rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord has testified that the tenant was served with their application and Notice of hearing by posting it to the tenant's door. Section 89(1)(a); 89(1)(c) and 89(1)(e) of

the Residential Tenancy Act (Act) states that An application for dispute resolution when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Consequently I deem the tenant has not been served in the correct manner with the landlord application and Notice of Hearing as a landlord is only entitled to serve a tenant in this manner when the landlord is only making an application for an Order of Possession. Therefore the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

While the tenant agrees he does owe rent to the landlord the tenant disputes the amount of rent owed as a payment was made to the landlord of \$3,000.00 on January 20, 2012.

The landlord agrees that the tenant did make this payment and agrees that they did not notify the tenant that the payment was accepted for use and occupancy only and does not reinstate the tenancy. When a landlord does not want the tenancy to continue the landlord must inform the tenant that the payment of rent outside the five day period does not cancel the 10 Day Notice. The landlord must also inform the tenant that the payment is being accepted for use and occupancy only and does not reinstate the tenancy and the landlord must tell the tenant that they must either vacate the rental unit in accordance with the Notice to End Tenancy or the tenant must vacate at the end of the month.

Consequently I find the landlord has reinstated the tenancy and the landlord's application for an Order of Possession is dismissed.

With regard to the landlord's application to keep the security deposit; as the tenancy will continue at this time the landlord is not entitled to an order to keep the security deposit and this section of the landlords claim is also dismissed with leave to reapply.

The landlord is at liberty to reserve the tenant with another 10 Day Notice to End Tenancy if there continues to be rent arrears.

### Conclusion

The landlord's application is dismissed with leave to reapply.

As the landlord has been unsuccessful with their claim the landlord must bear the cost of filing their own application.

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: January 25, 2012.

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Residential Tenancy Branch