



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MND, MNR, OPR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent, a monetary order for accrued rental arrears owed and a monetary order for anticipated loss of revenue, cleaning, repair costs for damage to the suite and bailiff fees.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and this evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Is the landlord is entitled to monetary compensation for rental arrears owed?

Is the landlord entitled to monetary compensation for damages and losses?

### Background and Evidence

The tenancy began on May 1, 2012 and the current monthly rent is \$1,400.00 per month. A security deposit of \$700.00 and pet damage deposit of \$250.00 was paid.

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent confirming that, as of October 6, 2012, the tenant had was in arrears for rent in the amount of \$1,400.00.

The landlord testified that the tenant has also failed to pay \$1,400.00 rent due on November 1, 2012, which is being claimed.

The tenant testified that he had a verbal arrangement with the previous owner to waive the rent for repairs that were needed on the rental unit. The tenant acknowledged that this agreement was not in writing and that he did not file to dispute the Ten Day Notice to End Tenancy for Unpaid Rent within 5 days.

In addition to the rental arrears being claimed above, the landlord is also claiming other costs including loss of revenue of \$1,400.00, cleaning and repairs of \$1,200.00 and bailiff fees of \$1,000.00.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door. The tenant has not paid the arrears within 5 days to cancel the Notice and did not apply to dispute the Notice. I find that the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts, I find that the landlord is entitled to an Order of Possession.

With respect to rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. I find that the tenant failed to pay the rent when it was due and never satisfied the debt. Accordingly, I find that the landlord is entitled to monetary compensation for rental arrears based on the Ten Day Notice to End Tenancy for Unpaid Rent in the amount of \$1,400.00 for October 2012 and \$1,400.00 for November 2012.

In regard to the landlord's claim for compensation for potential loss of revenue, I find that this has not occurred yet and would not qualify as rental arrears under section 26 of the Act. This is a claim in damages, not rent owed.

In a claim for damage or loss under section 7(1) of the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test for damages by establishing the existence and value of the damage/loss, proving it stemmed directly from a violation of the agreement or Act by the respondent and that a reasonable attempt was made to mitigate the damage or losses incurred pursuant to section 7(2) of the Act.

With respect to the landlord's claim for the costs associated with cleaning and repairs of the suite, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this instance, I find that the tenant has not yet vacated the suite and therefore the landlord's claim for compensation for cleaning and repairs is premature.

In regard to the claim for the cost of a bailiff, I find that this expenditure has not occurred and that the claim has no basis at this time.

Therefore I find that the damage claims for potential loss of revenue, cleaning, repairs or bailiff charges, must be dismissed, and I do so with leave to reapply. The landlord is at liberty to pursue these claims after the tenancy has ended, the move-out inspection has been completed and it can be proved that the costs or losses have actually transpired.

I find that the landlord is entitled to total compensation of \$2,850.00, comprised of \$2,800.00 in rental arrears and the \$50.00 cost of this application. I order that the landlord retain the tenant's security and pet damage deposits totaling \$950.00 in partial satisfaction of the claim, leaving \$1,900.00 still owed to the landlord.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$1,900.00. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is ordered dismissed with leave to reapply.

### **Conclusion**

The landlord is granted a monetary order for rent owed and an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent. The landlord's other monetary claims are dismissed with leave as they were found to be premature.

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 27, 2012.

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Residential Tenancy Branch