



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:14 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on June 2, 2013. The landlord testified that she handed the tenant a copy of her dispute resolution hearing package between 7 and 8 p.m. on June 10, 2013. Her husband testified that he witnessed the landlord hand the tenant a copy of her hearing package on June 10, 2013. I am satisfied that the landlord served the tenant with the above documents in accordance with the *Act*.

At the commencement of the hearing, the landlord withdrew her application for an end to this tenancy and an Order of Possession because the tenant vacated the rental unit on June 12, 2013. Her application for an Order of Possession is withdrawn.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that the tenant commenced living in the basement of this rental home on or about January 1, 2013. She said that she allowed him to live there while he was conducting repairs to the basement to enable the basement to be used for rental

purposes. She said that she paid him to perform this work and allowed him to reside in the lower level of this property while he completed the renovations.

She testified that as the work neared completion, the tenant advised her that he intended to remain in the lower level and had no plans to leave. She testified that she prepared a written Residential Tenancy Agreement, but he refused to sign it. Although she did not have a formal agreement with the tenant, she said that they entered into an oral agreement whereby he would be allowed to live in the lower rental unit for a monthly rent of \$875.00. He also delayed paying rent, giving her various explanations as to when he would be able to do so. She said that the tenant became a “squatter”, remaining in the rental unit without paying any rent. Although he was supposed to pay a security deposit, she never received any deposit from the tenant.

The landlord testified that she is not interested in attempting to recover anything for the months of January through April 2013, as the repairs were not completed until April 20, 2013. However, she applied for a monetary award of \$2,737.00, to enable her to recover unpaid rent for May, June and July 2013. She said that the tenant only vacated the rental unit after receiving a copy of her application for dispute resolution.

The landlord testified that she began efforts to advertise the availability of the rental unit once the tenant vacated the rental premises on June 12, 2013. She said that she placed advertisements on a popular rental website, noting the availability of the rental unit as of August 1, 2013. She said that she did not wish to obtain a tenant earlier than that date because she did not wish to attract prospective tenants who were failing to honour their existing rental agreements. She testified that she has obtained a new tenant who plans to take occupancy on August 5, 2013.

### Analysis

Based on the landlord's undisputed testimony, I find that there was a landlord/tenant relationship established as of April 20, 2013, when the work to renovate and upgrade the lower level of this home was completed. As the landlord said that she is not seeking unpaid rent until May 1, 2013, I have not awarded unpaid rent prior to that date.

There is undisputed evidence that the tenant resided in the rental premises for the period from May 1, 2013 until June 12, 2013. Based on this undisputed testimony, I find that the landlord is entitled to a monetary award of \$875.00 for unpaid rent for May 2013.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Despite this tenancy having been created by way of an oral agreement between the parties, the tenant is still required to abide by the provisions of the *Act* with respect to giving notice to end a tenancy. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for June 2013, the tenant would have needed to provide his notice to end this tenancy before May 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

There is undisputed evidence that the tenant did not pay any rent for June 2013, the last partial month of his tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, I find that it would be highly unlikely that the landlord would have been able to locate a tenant who would have been able to move into the rental unit for the period from June 13 until June 30, 2013. As such, I find that the landlord is entitled to a monetary award of \$875.00 for unpaid rent owing for the month of June 2013.

I find that the landlord has not taken proper measures in accordance with section 7(2) of the *Act* to mitigate the tenant's loss for unpaid rent for July 2013. By choosing to advertise for tenants who would be interested in occupying the premises for August 2013, rather than July 2013, the landlord has failed to take adequate steps to minimize the tenant's losses for July 2013. As such, I dismiss the landlord's application for unpaid rent or losses of rent for July 2013, without leave to reapply.

As the landlord has been partially successful in her application, I find that she is entitled to recover her filing fee from the tenant.

### Conclusion

I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent for May and June 2013, and to recover her filing fee:

Item	Amount
Unpaid May 2013 Rent	\$875.00
Unpaid June 2013 Rent	875.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,800.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application to end this tenancy and obtain an Order of Possession is withdrawn.

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: July 11, 2013

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Residential Tenancy Branch

