



# 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 matter was convened to deal with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence by registered mail, sent September 9, 2013, to the rental unit. The Landlord provided a copy of the receipt and tracking information, which indicates that the Tenant received the documents on September 10, 2013.

The Tenant testified that she sent the Residential Tenancy Branch and the Landlord documentary evidence by mail "last week" and that she also faxed documents to the Residential Tenancy Branch. As of the time of the Hearing, neither the Landlord nor the Branch has received any documentary evidence from the Tenant. I explained to the Tenant that documents must be provided as soon as possible, but in any event at least 5 clear days before the Hearing date.

### **Issue(s) to be Decided**

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

### **Background and Evidence**

This tenancy began on August 18, 2012. Monthly rent is \$1,500.00, due on the first day of each month. The Tenant paid a security deposit and a pet damage deposit in the total amount of \$1,500.00 at the beginning of the tenancy. A copy of the tenancy agreement was provided in evidence.

The Landlord testified that the Tenant did not pay rent when it was due on June 1, 2013. He stated that she had been late before but had always eventually paid. On July 1, 2013, the Tenant did not pay rent when it was due. On July 19, 2013, the Landlord

issued a Notice to End Tenancy for Unpaid Rent in the amount of \$3,000.00. He testified that he hand delivered the Notice to the Tenant on July 19, 2013. A copy of the Notice to End Tenancy was provided in evidence.

The Landlord stated that the Tenant paid \$1,500.00 cash to the Landlord on August 1, 2013, and that he provided her with a receipt. A copy of the receipt was provided in evidence. He stated that she provided him with cheques for July, August, September and October, 2013, but that when he tried to negotiate the cheques the Tenant's bank would not honour them because the Tenant's account had been closed. The Landlord provided copies of the Tenant's cheques in evidence.

The Tenant agreed that she is in arrears for rent, but stated that she is not sure how much. The Tenant testified that she was in an accident and that she is dependent upon disability payments and on the Ministry to pay for moving expenses, etc. The Tenant stated that she did not file an Application for Dispute Resolution seeking to cancel the Notice to End Tenancy. She submitted that rent was not paid through no fault of her own and that she had to sell a vehicle to make a partial payment to the Landlord.

The Tenant stated that she was slowly moving out of the rental unit and that she has given the keys to the rental unit back to the Landlord. She stated that she has finished moving and is no longer occupying the rental unit.

The Landlord stated that he had no idea that she had moved out of the rental unit and that the Tenant has not returned the keys to the rental unit.

The Tenant then testified that she gave the keys to an acquaintance of the Landlord's "last night".

The Tenant gave further testimony which was not relevant to the Landlord's application.

### **Analysis**

I accept that Notice to End Tenancy was hand delivered to the Tenant on July 19, 2013.

I accept the evidence before me that the Tenant did not file an Application to cancel the Notice, nor pay the rent owed in full, within the 5 days granted under Section 46(4) of the Act.

Based on the foregoing, I find that the Tenant is **conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on July 29, 2013.**

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the Director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act provides that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, I find that the Tenant had no such right.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit and pet damage deposit towards partial satisfaction of the Landlord's monetary award.

The Landlord has been successful in his application and I find that he is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent for July, August, September and October	\$6,000.00
Recovery of the filing fee	<u>\$100.00</u>
Subtotal	\$6,100.00
Less deposits	- \$1,500.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF</b>	<b>\$4,600.00</b>

### **Conclusion**

Pursuant to the provisions of Section 55(2)(b) of the Act, I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$4,600.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 17, 2013

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Residential Tenancy Branch

