



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Entre Nous Femme Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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.

An agent for the landlord and the tenant attended the conference call hearing and both gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The landlord has also provided evidentiary material to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the costs of changing the locks to the rental unit?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that a tenancy agreement was entered into by the parties for a month-to-month tenancy to begin on June 1, 2013, however the tenant has not physically resided there. The tenant has some disabilities, which is a requirement for residing at this complex, but has been staying in a care home since the beginning of the tenancy. The rent is \$971.00 per month which is subsidized, and the tenant's portion is \$271.00 per month. On May 8, 2013 the landlord collected a security deposit from the tenant in the amount of \$485.50 which is still held in trust by the landlord.

Since the tenancy began, few items belonging to the tenant have been moved in, and friends of the tenant have been staying in the rental unit. Rent has been paid, but the landlord has received complaints from neighbours about the tenant's friends. Further, they changed the locks to the rental unit without the landlord's authorization, and the landlord's agents had to re-lock. The landlord claims \$110.25 for that cost and has provided a copy of a receipt to substantiate the amount.

The tenant failed to pay rent when it was due for the month of January, 2014 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 8, 2014, a copy of which has been provided as evidence. The landlord's agent testified it was served on the tenant the same day by registered mail. A copy of the Canada Post receipt and proof of delivery bearing that date has also been provided. It also shows successful delivery with a signature of a recipient on January 9, 2014. The notice is dated January 8, 2014 and states that the tenant failed to pay rent in the amount of \$271.00 that was due on January 1, 2014 and contains an expected date of vacancy of January 18, 2014.

The friends have vacated the rental unit and the landlord conducted an inspection on February 4, 2014 after leaving a notice posted to the door on January 27, 2014. The unit appeared to be abandoned; no food in the cupboards or fridge, a bed, table, and chairs were left, and items were left on the bed.

The landlord received a cheque from the tenant for the unpaid rent for January on February 11, 2014, but the landlord hasn't cashed it because the landlord does not wish to reinstate the tenancy. No receipt was issued. The landlord has provided a copy of the cheque and envelope showing a date processed in the postal facility of February 7, 2014.

No rent has been received for February or March, 2014.

The landlord seeks an Order of Possession for unpaid rent, a monetary order for January, February and March rent totalling \$813.00, the cost of locks for the rental unit at \$110.25, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and recovery of the \$50.00 filing fee.

The tenant testified that she has been at the rental unit from time-to-time during the tenancy and needs to maintain a home.

The tenant had a friend mail the rent cheque for January, 2014 to the landlord sometime in January. The tenant had also emailed the landlord's agent about the overdue rent, and the landlord didn't cash the cheque or reply to the email, so the tenant didn't pay anymore rent awaiting this hearing. Also, the Ministry was paying the tenant's rent but would not continue to pay for this rental unit as well as for the tenant's stay at the current care facility.

The tenant's witness testified that she mailed the rent cheque to the landlord on behalf of the tenant about 5 days before the end of January, 2014.

The witness further testified that she has been in the rental unit quite abit and was there the night of January 27 and into the morning of January 28, 2014 and no notice was found about an inspection, nor did anyone visit the rental unit.

### Analysis

The *Residential Tenancy Act* states that when a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to either pay the rent in full or dispute the notice. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after it is served. The *Act* also states that documents served by registered mail are deemed to have been served 5 days after mailing.

In this case, the landlord has provided evidence of having served the tenant with the notice to end tenancy by registered mail on January 8, 2014. Even though the tenant received it on January 9, 2014 according to the landlord's evidence, I find that it was deemed served on January 13, 2014 and therefore the effective date of vacancy ought to show as January 23, 2014, not January 18, 2014. However, incorrect effective dates

are automatically changed to the nearest date that complies with the *Act*, which I find is January 23, 2014. The tenant did not pay the rent by that date. The landlord testified that it was received on February 11, 2014 and has provided some evidence of that. The tenant testified that it was sometime in January that she had a friend mail the cheque. The witness testified that it was mailed about 5 days before the end of January. That would make it about January 26, 2014 that the cheque was mailed, and the effective date of vacancy had already passed. The tenant did not pay the rent or dispute the notice within the 5 days, and therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended.

With respect to the monetary claim for unpaid rent, I find that the landlord has established a claim for January and February rent, but considering the evidence that there are few items in the rental unit to move out, I am not satisfied that the landlord will not be able to re-rent the unit for March 15, 2014. Therefore, I find that the landlord has established a claim for half of the rent for March, for a total of \$677.50.

With respect to the replacement of the locks, I have reviewed the evidence of the landlord, and accept the undisputed testimony of the landlord's agent that friends of the tenant changed the locks without the landlord's permission, vacated the rental unit, and the landlord had to have the locks replaced. A tenant is responsible for guests and for damage caused to a rental unit, and changing the locks without the landlord's authorization is not permitted under the *Act*. The landlord is required to have a means of entry in case of emergencies to protect life or property, unless otherwise ordered at dispute resolution. Therefore, I find that the landlord has established a claim in the amount of \$110.25 for changing the locks.

In summary, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant. I further find that the landlord has established a monetary claim as against the tenant for \$677.50 in unpaid rent, \$110.25 for replacement of the locks, and \$50.00 for recovery of the filing fee, for a total of \$837.75. I order the landlord to keep the security deposit in the amount of \$485.50 in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference in the amount of \$352.25.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further 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 \$352.25.

These orders are final and binding on the parties 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: March 04, 2014

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Residential Tenancy Branch

