



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order to recover unpaid rent and to recover the filing fee for this application. At the outset of the hearing the landlord withdrew his application for an Order of Possession and an Order to keep the security deposit.

I am satisfied the tenant was served with the hearing documents in accordance with section 82 of the *Manufactured Home Park Tenancy Act (Act)*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

Both parties agree that this month to month tenancy started on January 31, 2009 when the tenant took over the tenancy agreement. The tenants pad rent is \$310.00 which is due on the first of each month.

The landlord testifies that the tenant failed to pay her rent for January, February and March, 2011 and a 10 Day Notice to End Tenancy was served to the tenant in person on March 03, 2011. This Notice states the tenant has five days to pay the outstanding rent of \$620.00 or dispute the notice or the tenancy will end on March 14, 2011. The landlord testifies that the tenant paid \$310.00 on March 10, 2011 and the remainder on March 25, 2011. The landlord states he accepted these sums from the tenant and did not provide her with a receipt marked for use and occupancy only.

The landlord testifies he does not want to necessarily end the tenancy but does want the tenant to pay her rent on time each month.

The tenant testifies that she was late paying her rent as she was waiting for her widows' pension to be sent to her from the United Kingdom. She states this has now been sent and she has paid her rent including rent for April, 2011.

#### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When a landlord issues a tenant with a 10 Day Notice to End Tenancy and the tenant does not pay the outstanding rent within the five days after receiving the notice; any rent money paid by the tenant to the landlord after this five day period should be excepted by the landlord for use and occupancy only and does not reinstate the tenancy.

In this matter the tenant paid the outstanding rent after the five day period had ended and the landlord accepted this rent payment without specifically notifying the tenant that he was accepting her payments for use and occupancy only and did not intend to reinstate the tenancy. As the landlord failed to notify the tenant of this he has in fact reinstated the tenancy at the point he accepted the rent and the tenancy may continue at this time.

With regard to the landlords claim for a Monetary Order as the tenant has settled all outstanding rent payments no Monetary Order is required at this time. However it is my decision that the tenant must reimburse the landlord for his **\$50.00** filing fee as he filed this application in good faith that rent was outstanding.

Conclusion

I HEREBY FIND in favor of the landlord's claim to recover his filing fee of \$50.00. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 05, 2011.

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Residential Tenancy Branch