



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on September 17, 2011 and that rent was set at \$1,350.00 per month. The tenancy agreement shows that rent is payable in advance on the 15<sup>th</sup> day of each month.

The landlord testified that the last rental payment received from the tenant was for the period from October 15 – November 14. He stated that he has received no monies whatsoever for any rental periods after November 15. On December 10, the landlord served the tenant with a 10 day notice to end tenancy which alleged that \$2,025.00 in rent was owing.

The tenant acknowledged having received the notice to end tenancy on December 10 but testified that he gave the landlord a cash payment on November 15. The tenant stated that the landlord frequently tried to force him to pay rent on the 1<sup>st</sup> of the month, despite the tenancy agreement stating that rent was not due until the 15<sup>th</sup>. The tenant testified that the landlord does not give receipts for cash payments.

The landlord acknowledged that at one point he had mistakenly believed that rent was payable on the 1<sup>st</sup> of the month, but has now realized his error. He also acknowledged that he has not provided receipts for cash payments.

The tenant's testimony regarding rent for the period from December 15 – January 14 was inconsistent. He first testified that he had not paid rent for that period, then changed his testimony and stated that he had paid rent and continued to vacillate on the issue until the end of the hearing when he emphatically stated that the rent had been paid for that period.

### Analysis

First addressing the notice to end tenancy, at the hearing the landlord stated that on the date he issued the notice, the only rent which was owing was \$1,350.00 for the rental period from November 15 – December 14. The notice identified an incorrect amount and I find that because the notice did not clearly identify the amount owing at the time of service, it deprived the tenant of the ability to pay the accurate amount owing and cancel the notice. For this reason I find that the notice cannot be effective to end the tenancy and I dismiss the claim for an order of possession.

When a landlord alleges that rent is unpaid, the tenant bears the burden of proving that rent has been paid. Although the landlord was legally obligated to provide the tenant with receipts for cash payments and acknowledged that he has failed to do so, the tenant has not provided any evidence to corroborate his claim that rent has been paid, although he claimed that he has bank account statements which would confirm that money was withdrawn on or about November 15 as well as in December. This combined with the tenant's inconsistent testimony regarding his December rental payment leads me to find that the tenant has not satisfied the burden of proving that rent has been paid. I find that the tenant owes the landlord \$1,350.00 for the period from November 15 – December 14 and \$1,350.00 for the period from December 15 – January 14. The landlord applied only for \$2,025.00 and I am limited to awarding this amount. I award the landlord \$2,025.00 and grant him a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The claim for an order of possession is dismissed. The landlord is granted a monetary order for \$2,025.00.

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: January 11, 2012

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Residential Tenancy Branch