



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord – OPR, MNR

For the tenant - CNR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent. The tenant has applied to cancel the Notice to End Tenancy for unpaid rent.

The phone line remained open for 10 minutes however the tenant did not dial into the call during this time. Based on this I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 14, 2012. Mail receipt numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlords testify that this month to month tenancy started on August 01, 2005. Rent for this unit is \$1,183.00 per month and is due on the first day of each month.

The landlords testify that the tenant had been late with her rent over the last few months of her tenancy. The landlords gave the tenant a rent subsidy for April and May, 2012 to help the tenant out and the tenant requested a further subsidy for June, 2012 which the landlords reluctantly approved. The landlords testify that they are a non profit society and they could not give the tenant any further rent subsidies.

The tenant failed to pay all the rent for July, 2012 and has an outstanding balance of \$583.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 03, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$583.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 14, 2012. The tenant did not pay the outstanding rent but did file an application to dispute the Notice within five days; however has not appeared at the hearing today to present the merits of her application.

The landlords have applied for a Monetary Order to recover the outstanding rent for July, 2012 and have also applied to recover unpaid rent for August, 2012 of \$1,183.00 the landlords seek an Order of Possession to take effect two days after service.

Analysis

Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for July, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$583.00** pursuant to s.67 of the Act.

With regard to the landlords claim for unpaid rent for August, 2012; as the tenancy will end before the beginning of August the landlord still has the opportunity to re-rent the unit therefore mitigating the loss of rental income. Consequently, the landlords are premature with their application to recover unpaid rent for August, 2012 and I dismiss this section of the landlords claim with leave to reapply in the event the landlords do suffer a loss of rent for August.

The landlords will receive a Monetary Order for the sum of **\$583.00** pursuant to s. 67 of the Act.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on July 06, 2012 and the effective date of the notice is amended to July 16, 2012 pursuant to section 53 of the Act. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and although the tenant did apply to dispute the Notice the tenant failed to appear at the scheduled hearing and the tenants application has been dismissed.

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 the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$583.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply

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 26, 2012.

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Residential Tenancy Branch