



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Barclay Tower Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. The hearing was conducted by conference call. The landlord's representative and the tenants called in and participated in the hearing.

### Issues

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?

### Background and Evidence

This tenancy began on in 2008. As of June, 2014 the monthly rent is \$1,390.00. Before June it was \$1,370.00 per month. The landlord's representative testified that the tenants failed to pay rent for June and on June 8, 2014 he served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting the Notice to the tenants' door. The landlord filed the application for dispute resolution and served it to the tenants by registered mail sent on June 19, 2014. The tenant acknowledged receipt of the application for dispute resolution and Notice of Hearing, but he said that he did not receive the 10 day Notice to End Tenancy. The tenants paid rent in July; it was accepted for use and occupancy only and applied to the outstanding rent due for June. The tenants' rent payment in August was also accepted for use and occupancy only and applied to the rent due for July.

On August 5, 2014 the tenants sent a letter to the Residential Tenancy Branch. The letter enclosed a copy of a receipt for a bank money order said to be dated June 4, 2014 in the amount of \$1,370.00. In the letter the tenants said that the copy of the monetary order was evidence that their rent has been paid.

The landlord's representative said that the landlord did not receive a rent payment for June. The tenant testified that he was attempting to get information from his bank to verify whether or not the money order has been cashed, but he is still waiting for the bank to report to him. The tenant testified that a similar incident occurred in April when the tenants gave the landlord a money order that the landlord denied receiving. The tenant said that they replaced the April money order with a second payment of rent for April. He did not say whether the April payment was cashed or whether it was refunded by his bank.

After the hearing I inspected the copy of the money order receipt submitted as evidence by the tenants. The document was not a copy of the actual money order, but rather a copy of the counterfoil receipt that was detached from the original money order and retained by the

tenants as a record. The receipt showed the landlord as the payee. It was in the amount of \$1,370.00, not \$1,390.00, which was the actual amount due for June rent when a rent increase came into effect. According to the printed receipt form, the date format on the receipt was: "yyyy/mm/dd" and the actual date typed on the receipt was: "2014-04-06". The typed date on the receipt is therefore April 6, 2014 and not June 4, 2014 as the tenant contended.

### Analysis

Based on the evidence submitted, I find that the receipt provided by the tenants related to a money order given in payment of April rent and not for June rent. This is in accordance with the tenant's statement at the hearing that he gave the landlord a money order as payment for April rent.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. I accept the testimony of the landlord's representative in preference to that of the tenant and find that the tenants were served with a 10 day Notice to End Tenancy posted to the door of the rental unit on June 8, 2014. I find that the tenants did not apply to dispute the Notice and that they failed to pay the outstanding rent within five days of their deemed receipt of the Notice to End Tenancy on June 11, 2014. The tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The landlord has received rent payments, since the Notice was given, but they were accepted for use and occupancy only and were applied to outstanding rent for June and July. The rent for August remains unpaid.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order* - I find that the landlord has established a total monetary claim of \$1,370.00 as claimed. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,420.00 and I grant the landlord an order under section 67 in the said amount. This order may be filed in the Small Claims Court 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: August 13, 2014

