



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and the Landlord's Application for Dispute Resolution on August 25, 2014 by registered mail. A copy of the registered mail receipt and tracking number was provided in evidence by the Landlord. Pursuant to Section 90 of the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of August 30, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Only the first page of the Residential Tenancy Agreement was provided in evidence (the “Agreement”); however, the Landlord testified and provided additional evidence with respect to the tenancy. He testified that the tenancy began January 2014 in which monthly rent was payable in the amount of \$820.00 per month. The Tenant did not pay a security deposit.

The Tenant failed to pay rent for the month of August 2014. On August 9, 2014, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$820.00 was due as of August 1, 2014 and with an effective date of August 19, 2014 (the “Notice”). The Landlord also introduced in evidence a Proof of Service—Notice to End Tenancy which indicated that the Notice was served personally on the Tenant at 10:00 a.m. on August 9, 2014 as well as being attached to the rental unit door. Accordingly, I find that the Tenant was personally served with the Notice as of August 9, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, August 14, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not pay the outstanding rent, nor did the Tenant make an application to dispute the Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$1,690.00 comprised of \$820.00 for August rent, \$820.00 for September rent and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the Act to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 24, 2014

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Residential Tenancy Branch

