



# 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 was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee for the cost of making the Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents on July 18, 2014 by registered mail.

The Landlord's agent provided the Canada Post tracking number during the hearing which was noted in the file. The Landlord's agent testified that the Canada Post website indicates that the Tenant received and signed for these documents on July 21, 2014. I accept the Landlord's agent's oral evidence and find that the Landlord served the Tenant with the required documents in accordance with Section 89(1) (c) of the Residential Tenancy Act (the "Act").

There was no appearance by the Tenant during the 11 minute duration of the hearing and there was no submission of written evidence by the Tenant prior to this hearing, despite being served notice of this hearing in accordance with the Act.

As a result, I have carefully considered the undisputed affirmed testimony of the Landlord's agent and the written evidence of the Landlord in this Decision as follows.

The Landlord testified that the since the time of making this Application the Tenant has also failed to pay for August and September, 2014 rent. As a result, I amended the Landlord's Application, pursuant to Section 64(3) (c) of the Act, allowing her to claim these additional amounts of unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep all of the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord's agent testified that this month to month tenancy started on November 16, 2009. The Tenant's rent contribution started at \$296.00 payable on the first day of each month, as detailed on the written tenancy agreement provided in written evidence, which was then increased in 2010 to \$320.00 per month. The Tenant paid a \$200.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant was in rent arrears in 2013 but managed to pay the outstanding balance of rent including post dated cheques until June, 2014. The Landlord's agent testified that on July 1, 2014 the Tenant failed to pay rent or provide any further post date rent cheques.

As a result the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the Tenant's door on July 2, 2014. A copy of the Notice provided in written evidence, shows an expected date of vacancy of July 15, 2014 due to \$320.00 in unpaid rent due on July 1, 2014. The Landlord's agent testified that the Tenant has also failed to pay rent for August and September, 2014 and now claims a total of three months of rental arrears in the amount of \$960.00.

Analysis

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving the Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. The Tenant was served by the Landlord with the Notice on July 2, 2014 by attaching it to the Tenant's door. Section 90(c) of the Act explains that documents served by attaching them to the Tenant's door are deemed to have been received three days after. Therefore, I find that the Tenant was deemed to

be served with the Notice on July 5, 2014, and had until July 10, 2014 to pay the overdue rent or dispute the Notice, neither of which the Tenant did.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy on the Notice has now passed.

Based on the written and verbal evidence of the Landlord above and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord is also entitled to the rental arrears in the amount of **\$960.00** claimed.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,010.00. As the Landlord already holds the Tenant's \$200.00 security deposit, and no interest is payable on this amount, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlord is awarded \$810.00.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Residential Tenancy Act in the amount of **\$810.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) 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: September 17, 2014

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Residential Tenancy Branch

