



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage Merritt Real Estate Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, FF, OPR

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, to retain the security deposit, and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence, however the tenant did not attend. The landlord gave evidence the tenant was personally served with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution on July 24, 2014. I find the tenant was properly served.

The landlord advised that she also seeks an order of possession. Since the tenant was previously served with a notice to end tenancy, I find that the tenant had proper notice that his tenancy was at risk and it is therefore appropriate to allow the landlord to amend the Landlord's Application for Dispute Resolution to add a claim for an order of possession.

### Issue(s) 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 tenancy agreement signed by the tenant and property owner on August 29, 2012 indicates the tenancy started on August 29, 2012. The tenancy agreement indicates the tenant is obligated to pay rent of \$850.00 per month payable in advance on the 29<sup>th</sup> day of the previous month. The tenant also paid a security deposit of \$425.00.

The landlord gave evidence that the tenant was served with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenant's door on June 9,

2014. Section 90 specifies that a notice served in this manner is deemed to be received three days later. The Notice states the tenant failed to pay rent of \$850.00 that was due on June 1, 2014, and specifies an effective date (or move-out date) of June 22, 2014.

The landlord gave evidence that since the Notice was served, the tenant has made one payment of \$500.00 toward rent. The tenant continues to occupy the rental unit.

The landlord claims unpaid rent for the months of June, July, August, and September 2014, less the \$500.00 payment.

### Analysis

I find the tenant received the Notice on June 12, 2014. I note that the Notice specified June 1<sup>st</sup> rather than May 29<sup>th</sup> as the day the rent was due. However, I find the tenant was not prejudiced by this error as it allowed him three additional days to pay rent for the period May 29, 2014 to June 28, 2014 (the rental period indicated by the tenancy agreement).

I accept the landlord's evidence that the tenant made one further payment of \$500.00 in approximately mid-August 2014. According to Section 46(5), if a tenant does not pay the rent in full or make application for dispute resolution within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate to award the landlord a monetary order for unpaid rent for the months of June, July, and August 2014. I also find it appropriate to award the landlord an order for unpaid rent for the first half of September since the tenant continues to occupy the rental unit and the landlord will not be able to re-rent until at least mid-September. The landlord is entitled to recover rent of \$350.00 for June 2014 (\$850.00 less the \$500.00 payment), \$850.00 for July 2014, \$850.00 for August 2014, and \$425.00 for September 2014, for a total of \$2,475.00. The landlord is also entitled to recover their RTB filing fee of \$50.00.

The total amount due the landlord is \$2,525.00. I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord an

order under section 67 for the balance due of \$2,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order of \$2,100.00. The landlord is also entitled to retain the security deposit.

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 03, 2014

---

Residential Tenancy Branch

