



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession because the Tenant has breached an agreement with the Landlord and for unpaid rent. The Landlord also applied for a Monetary Order for: damage to the rental suite; unpaid rent; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”); to retain the Tenant’s security deposit, and to recover the filing fee.

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 October 10, 2014 by registered mail.

The Landlord provided the Canada Post tracking number during the hearing which I noted on the file. Section 90(c) of the Act states that a document sent by registered mail is deemed to have been received five days after it is mailed. A party cannot avoid service by a failure or neglect to pick up mail or use this as reasons alone to apply for a review of this decision.

Based on the evidence of the Landlord, and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (c) of the Act.

There was no appearance by the Tenant during the 17 minute duration of the hearing and there was no submission of written evidence by the Tenant prior to this hearing.

At the start of the hearing the Landlord explained that she was seeking an Order of Possession because the Tenant had failed to pay rent and that her Application regarding the breach of the tenancy agreement related to the Tenant not paying rent.

The Landlord also confirmed that her monetary claim amount only related to unpaid rent. Therefore, I dismissed the Landlord's Application for damage to the rental unit and for money owed or compensation for loss under the Act with leave to re-apply.

As a result, I have carefully considered the undisputed affirmed testimony and written evidence of the Landlord in relation to the unpaid rent as follows.

Issue(s) to be Decided

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

Background and Evidence

The Landlord testified that this month to month tenancy began on October 1, 2013. A written tenancy agreement was completed and the Landlord testified that rent was payable under the agreement in the amount of \$950.00 on the first day of each month.

The Landlord testified that the Tenant paid a \$425.00 security deposit on October 14, 2013 which the Landlord still retains.

The Landlord explained that the Tenant was habitually late paying his rent and from January, 2014 onwards the Tenant failed to pay rent for some months and choose to pay partial amounts or increased amounts for other months.

The Landlord provided a breakdown of the payments the Tenant had made during the tenancy in written evidence and testified that by the Tenant was currently in rental arrears of \$4,615.00, being the amount claimed by the Landlord from the Tenant.

The Tenant testified that she had served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on October 2, 2014 by posting the Notice to the door. The Notice, which was provided in written evidence, is dated September 29, 2014 and shows an effective date of vacancy of October 10, 2014 due to \$4,245.00 in unpaid rent due on October 1, 2014. However, the Notice does not indicate the rental unit address on the bottom portion of the Notice.

The Landlord testified that she had a conversation with the Tenant after serving him with a Notice where he acknowledged receipt of the Notice on his door, that it related to

his rental suite, and that the amount of rent due was \$4,615.00; this amount was not corrected on the Notice.

### Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement.

Section 52 (b) of the Act requires that in order for a Notice to be effective, it must give the address of the rental unit. However, Section 68(1) (a) of the Act allows the director to amend a Notice that does not comply with Section 52 of the Act if the person receiving the Notice knew or should have known the information that was omitted.

Based on the foregoing, I accept the Landlord's testimony that the Tenant acknowledged the Notice and that it related to his rental suite and therefore, the Tenant would have been aware that it was a Notice that related to his rental unit address. As a result, I amend the Notice to include the rental unit address.

Accordingly, I accept the Landlord's undisputed testimony that the Tenant has failed to pay rent in the amount of \$4,615.00 as claimed by the Landlord.

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 of the Notice.

The Tenant has failed to pay the outstanding rent owed and has failed to dispute the Notice. Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended in accordance with the Notice. Therefore, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy 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 to be also awarded the rental arrears in the amount of **\$4,615.00** claimed.

As the Landlord has been successful in this matter, the Landlord is entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is \$4,665.00.

As the Landlord already holds the Tenant's security deposit of \$425.00, 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 \$4,240.00.

### 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 **\$4,240.00**. 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.

The remainder of the Landlord's Application is dismissed with leave to re-apply.

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: October 31, 2014

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Residential Tenancy Branch

