



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, 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 personally served the Tenant with the Notice of Hearing and the Landlord's Application for Dispute Resolution on August 12, 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

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began November 15, 2012. Monthly rent was payable in the amount of \$950.00 on the 15<sup>th</sup> of the month. A security deposit in the amount of \$475.00 was paid on November 15, 2012.

The Landlord introduced in evidence a Monetary Order Worksheet indicating the Tenants failed to pay rent as follows:

- February 15, 2014 in the amount of \$950.00;
- March 15, 2014 in the amount of \$950.00;
- April 15, 2014 in the amount of \$950.00;
- May 15, 2014 in the amount of \$950.00;
- June 15, 2014 in the amount of \$950.00; and
- July 15, 2014 in the amount of \$950.00.

**Total: \$4,750.00**

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on July 23, 2014 indicating the amount of \$4,750.00 was due as of July 15, 2014 (the "Notice").

Notably, the Landlord's above calculations erroneously missed a month of rent owing, such that the correct total amount owing for the above time period is \$5,700.00.

The Landlord also introduced in evidence a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which indicated the Tenant, D.Y. was personally served the Notice on July 23, 2014 at 4:35 p.m.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, July 28, 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 Landlord testified that the Tenants also failed to pay the August 15, 2014 rent in the amount of \$950.00 and the September 15, 2014 rent such that the total amount owing for rent was \$7,600.00.

The Landlord testified that the Tenants paid a total of \$1,200.00 towards the outstanding rent; namely, \$950.00 approximately one and a half months ago, as well as a further \$300.00 on October 5, 2014, leaving a balance owing of \$6,350.00.

The Landlord also sought recovery of the \$50.00 filing fee.

### Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants 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 Tenants. 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 **\$6,400.00** comprised of \$6,350.00 in rent owing 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 law 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: October 07, 2014

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Residential Tenancy Branch

