



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. During the hearing the landlord testified that there are no monetary amounts now outstanding for rent and the landlord withdraws his application for a Monetary Order for unpaid rent and for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, served in person to the tenant by the landlord on October 20, 2014

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues to be decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?

### Background and Evidence

The landlord testified that this month to month tenancy started on September 01, 2013. Rent for this unit is \$800.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy.

The landlord testified that the tenant failed to pay rent for regularly since April, 2014. By October 01, 2014 the tenant owed an amount of \$2,400.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 10, 2014. This was handed personally to the tenant on that date. The Notice states that the tenant owes rent of \$2,400.00 which was due on October 01, 2014. The Notice informed the tenant that the tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 21, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has made a payment of \$2,400.00 on October 21, 2014. The landlord testified that he accepted this payment and informed the tenant that the landlord was still proceeding with an Order of Possession at the hearing and was not reinstating the tenancy.

The landlord testified that the tenant paid \$800.00 for November's rent on November 24, 2014. The landlord therefore seeks an Order of Possession effective as soon as possible. The landlord also requests to recover the \$50.00 filing fee from the tenant.

### Analysis

Section 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy as declared by the landlord. The Notice is deemed to have been received by the tenant on October 10, 2014. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I find the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

### Conclusion

I find that the landlord is entitled to an Order of Possession, effective **two days after service on the tenant**. This Order must be served on the tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord has been largely successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. I Order that the landlord retain this amount from the security deposit of \$400.00 leaving a balance of \$350.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: November 27, 2014

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Residential Tenancy Branch

