



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* on November 14, 2014 in accordance with Section 89 of the Residential Tenancy Act (the Act) *the tenant did not participate in the conference call hearing*. The landlord provided proof of registered mail service by way of the receipt, inclusive of the tracking number information for the registered mail. In addition, the landlord provided proof of registered mail service dated November 24, 2014 in relation to 45 pages of evidence, also provided to this hearing. The landlord testified that they are not aware if the tenant still resides in the unit, however the tenant has failed to pick up any of the registered mail.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began April 01, 2014. Rent in the amount of \$1300.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650.00. The tenant failed to pay rent in the month of November 2014, therefore on November 05, 2014 the

landlord served the tenant with a notice to end tenancy for non-payment of rent by placing the Notice *under* the tenant's door. The landlord claims they were concerned that someone other than the tenant would obtain the Notice to End. The landlord provided evidence which they argued proves that in spite of the service of the Notice contrary to the Act, the tenant likely received the notice. The tenant has further failed to pay rent for the month of December 2014. The amount of the landlord's monetary claim is for the unpaid rent in the sum of \$2600.00.

### **Analysis**

Based on the landlord's testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find that the notice complies with Section 52 of the Act. However, I further find that Section 88 of the Act, in relevant part, states as follows (**emphasis mine**):

#### **How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person **must** be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or**, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

I find that the Act is unwavering on the requirement that a Notice to End may not be served by placing it *under* a door. I find that the landlord did not provide the Notice in accordance with the Act, and in the absence of the tenant confirming they received the Notice, I find that the Notice to End is not valid to end the tenancy. Regardless, although the landlord has not provided evidence to support an end to the tenancy, I accept the landlord's evidence that the tenant has not paid the outstanding rent for November and December 2014.

Based on the above facts I find that the landlord is not entitled to an Order of Possession and this portion of their application is therefore **dismissed**, with leave to reapply. However, I find that the landlord has established a monetary claim for the unpaid rent. The landlord is also entitled to recovery of the filing fee.

***Calculation for Monetary Order***

Rental arrears	\$2600.00
Filing Fees for the cost of this application	50.00
<b>Total Monetary Award</b>	<b>\$2650.00</b>

The security deposit is retained by the landlord *in trust* and must be administered at the end of the tenancy.

**Conclusion**

The landlord's application for an Order of Possession is denied and effectively **dismissed**, with leave to reapply. The tenancy continues until it ends in accordance with the Act.

**I grant** the landlord an Order under Section 67 of the Act for the amount of **\$2650.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: December 15, 2014

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Residential Tenancy Branch

