



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR

### Introduction and Background

This hearing was originally dealt with by way of a Direct Request Proceeding (a non-participatory hearing) in response to the Landlord's Application for Direct Request (the "Application") made on March 12, 2015. The Application was made for an Order of Possession and a Monetary Order for unpaid rent.

On March 17, 2015 an Interim Decision was made by an Adjudicator who had conduct of the Landlord's Application. The Adjudicator made a finding that the Landlord had correctly served the Tenant with the required documents for the Application as required by the Act. However, the Adjudicator found that the Landlord's Application could not be progressed through the Direct Request process because the Landlord had failed to provide sufficient evidence of the amount of rent owed that had been documented by the Landlord on the notice to end the tenancy for unpaid rent.

The Arbitrator explained that tenancy agreement established rent payable by the Tenant in the amount of \$820.00. However, the Landlord issued the Tenant with a notice to end tenancy for unpaid rent in the amount of \$915.00. The Adjudicator explained that this amount may have related to a notice of rent increase, but the Landlord had failed to provide any evidence of this.

The Adjudicator decided that it was more proper for the Landlord's Application to be dealt with by way of a participatory hearing to determine the discrepancies and the validity of the notice to end tenancy. As a result, the Adjudicator adjourned the proceedings to be reconvened with the participation of both parties in this hearing.

The Landlord was provided with the notice of hearing documents to serve to the Tenant in accordance with the Act. The Tenant was sent a copy of the Interim Decision by the Residential Tenancy Branch. An agent for the Landlord appeared for the hearing and provided affirmed testimony. The agent was very confused about the process and struggled through the hearing to provide relevant information. However, the Tenant was able to confirm that she had not provided any documentary evidence prior to this hearing.

There was no appearance for the Tenant during the 30 minute duration of the hearing. The Landlord's agent testified that she was under the impression that a company member had personally served the documents for this hearing to the Tenant after they were received them

from the Residential Tenancy Branch. Therefore, I accepted service of the documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

### Issues to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order based on unpaid rent by the Tenant?

### Evidence

The Landlord testified that this tenancy began on January 1, 2013 for a fixed term of one year after which it continued on a month to month basis. The Landlord's agent explained that the rent started off at \$820.00 payable on the first of every month; the rent was then increased from \$820.00 to \$835.00 in January 2014, and then from \$835.00 to \$845.00 in January 2015. The Landlord's agent testified that the Tenant had been served with the notice of rent increase in accordance with the Act. However, the Landlord failed to provide any evidence of the notice of rent increase.

The Landlord's agent testified that by March 1, 2014 the Tenant was in rent arrears for the following amounts: \$45.00 which had accumulated during the first two years of the tenancy; \$25.00 for a late fee as provided by the written tenancy agreement; and \$845.00 for unpaid March 2015 rent. As a result, the Landlord served the Tenant with a notice to end tenancy for unpaid rent on March 2, 2015 for the amount of \$915.00.

When the Landlord's agent was asked about the \$45.00 rental arrears that had accumulated during the first two years of the tenancy, the Landlord's agent was unable to explain this amount. The Landlord also failed to provide any documentary evidence to show the amounts outstanding and the dates the amounts had not been paid.

The Landlord's agent explained that after the Tenant was served with the Notice on March 2, 2015, the Tenant paid \$845.00 for March 2015 rent. As a result, the Tenant was issued with a payment receipt for this amount which indicated that the payment was being accepted for use and occupancy only.

The Landlord's agent explained that the Tenant had also paid the \$25.00 late fee for March 2015 rent. On March 23, 2015 the Tenant also paid full rent for April, 2015 and no evidence was provided that this amount was accepted for use and occupancy only. The Landlord's agent stated that the Tenant was now in \$45.00 rental arrears which she was now seeking an Order of Possession and a Monetary Order for.

### Analysis

While the Landlord failed to provide any evidence relating to the notice of rent increases given to the Tenant over the course of the tenancy, which was one of the cautions the Adjudicator had

pointed to in the Interim Decision, I accept that the Tenant's rent increase is currently \$845.00. This is based on the evidence provided by the Landlord that the Tenant paid the Landlord rent in the amount of \$845.00 for March 2015.

The Landlord's agent confirmed that the rent for March 2015 had been paid by the Tenant within the five day time period afforded to the Tenant by the notice to end tenancy. The Landlord's agent also confirmed that the Tenant had paid the late fee for March 2015 rent as well as full rent for April 2015.

However, the Landlord relies on her testimony that the Tenant owes \$45.00 for rental arrears accumulated during the tenancy which was included in the amount on the notice to end tenancy. Even though the Landlord had been cautioned by the Adjudicator regarding the need to have evidence of the amount outstanding on the notice to end tenancy, I find the Landlord failed to provide sufficient evidence of this amount for this hearing.

The Landlord's agent seeks to rely on her oral testimony that the Tenant has not paid rent in the amount of \$45.00 that has accumulated during the tenancy; however, the Landlord provided no corroborating or supporting evidence of this amount. Therefore, I am not satisfied that the Tenant is in rental arrears for this amount.

As I have determined that there is not sufficient evidence to prove the Tenant is in rental arrears and that the Tenant had paid April 2015 rent thereby effectively re-instating the tenancy, I am unable to grant the Landlord's Application for an Order of Possession and a Monetary Order.

However, the Tenant is cautioned of her obligation to pay rent under the tenancy agreement and in accordance with the Act.

### Conclusion

The Landlord's Application is dismissed.

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: April 27, 2015

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Residential Tenancy Branch

