



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**      OPR

#### **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 or utilities.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person by the landlord's agent on February 26, 2015.

I previous hearing took place on March 19, 2015. The tenant applied for a review consideration of that hearing under the grounds that the tenant could not attend the hearing. A review hearing was granted and a new hearing was conducted today. The landlord's agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant again, despite receiving notice of this hearing from the Residential Tenancy Branch and serving that Notice of Hearing to the landlord. All of the testimony and documentary evidence was carefully considered.

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

Are the landlords entitled to an Order of Possession for unpaid rent?

#### **Background and Evidence**

The landlord's agent testified that the landlord took over this building in 2014 and the tenant was already residing in the unit. The landlord's agent believes the tenant has been a tenant for eight or nine years; however, the previous landlord did not provide a tenancy agreement or other documentation concerning the tenancy. Rent for this unit is

\$525.00 per month due on the 1<sup>st</sup> of each month. The Ministry pay \$220.02 per month towards the tenant's rent and the tenant is responsible for the balance of \$304.98.

The landlord's agent testified that the tenant failed to pay \$304.98 in January and February, 2015. This left an outstanding amount of \$609.96. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on February 04, 2015. This was served by posting it to the tenant's door. The landlord has provided a proof of service document for the service of the 10 Day Notice which has been signed by a witness. The Notice informed the tenant that the tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 14, 2015. The tenant did not pay the outstanding rent or file an application to dispute the Notice.

The landlord's agents testified that the tenant had signed an agreement to pay back the rent arrears but to date has only paid \$150.00. The tenant is now in arrears for over \$1,000.00. The landlord is not seeking to recover the rent arrears at this time but request that the original Order of Possession issued on March 19, 2015 is upheld.

### **Analysis**

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which 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 am satisfied from the undisputed evidence before me that there is outstanding rent for January and February, 2015 of \$609.96 as indicated on the Notice. I am also satisfied that the Notice was served upon the tenant pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on February 07, 2015 and the effective date of the Notice is amended to

February 17, 2015 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within the five allowable days and did not file an application to dispute the Notice.

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 amended effective date of the Notice.

### **Conclusion**

S. 82(3) of the *Act* states that following the review, the director may confirm, vary or set aside the original decision or order. As the landlord has already received an Order of Possession which was suspended until the matter was heard again at this hearing, I hereby **confirm the original Order of Possession issued on March 19, 2015.**

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: May 29, 2015

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Residential Tenancy Branch

