



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend the hearing, which lasted approximately 28 minutes. The landlord and his English language interpreter, BJ (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 16, 2015 ("10 Day Notice"), by posting it to the tenants' rental unit door on the same date. In accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 19, 2015, three days after its posting.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on April 10, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number as proof of service with his Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on April 15, 2015, the fifth day after its registered mailing.

### Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this month to month tenancy began approximately 4 years ago in 2011. The landlord could not recall the exact date. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord indicated that no written tenancy agreement exists for this tenancy, as only a verbal agreement was reached. The rental unit is the basement suite of the landlord's house and the landlord lives on the main floor. The landlord testified that the tenant is still residing in the rental unit, as the tenant could be heard talking in the rental unit as recently as two nights prior to this hearing.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$3,600.00 was due on February 28, 2015. The landlord confirmed that the notice indicates an effective move-out date of March 28, 2015. The landlord stated that the tenant made a payment of \$1,800.00 a few days after receiving the 10 Day Notice towards three months of rent from December 2014 to February 2015.

In the landlord's Application, he initially requested a monetary order of \$2,400.00 total from October to November 2014 and March to April 2015 rent. At the hearing, the landlord requested to amend his monetary claim to seek an additional \$600.00 for unpaid May 2015 rent. Accordingly, the landlord stated that \$3,000.00 in rent is owing for this tenancy.

The landlord is also seeking to recover the \$50.00 filing fee for this Application from the tenant.

### Analysis

#### Order of Possession

The landlord did not provide a copy of the 10 Day Notice with his Application, as he only provided a photograph of a 10 Day Notice posted to a door. I asked the landlord to provide me with a copy of the 10 Day Notice by way of facsimile after the hearing. I

received a faxed copy of a 10 Day Notice after the hearing but it was a different notice than the one contained in the photograph provided with the landlord's Application. Most notably, the faxed copy did not have an effective move-out date in the notice, while the photograph of the other notice clearly shows a move-out date.

Rule 3.7 of the Residential Tenancy Branch ("RTB") Rules of Procedure states the following, in part:

*Documents must be legible copies, not photographs of printed material.*

...

*To ensure fairness and efficiency, an Arbitrator has the discretion to not consider evidence if the Arbitrator determines it is not readily identifiable, organized, clear and legible.*

The landlord submitted a photograph of the 10 Day Notice with his Application. As per Rule 3.7 above, I have the discretion not to consider this evidence. When I requested a copy of the same notice be submitted after the hearing, the landlord provided a different notice that is not identical to the notice in the photograph. I find that this faxed copy of the notice is not readily identifiable or accurate, due to the difference noted above regarding the move-out date.

While I do not disbelieve the landlord's testimony regarding the contents of the 10 Day Notice, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided. As the landlord is seeking an order of possession against the tenant and the 10 Day Notice is the basis of this application, the landlord should be able to submit a copy of the notice he is relying upon. The landlord has been unable to produce a valid copy of the 10 Day Notice. Accordingly, I dismiss the landlord's application for an order of possession based on the 10 Day Notice, dated March 16, 2015, without leave to reapply.

The landlord may make a future application for dispute resolution to obtain an order of possession based on a new 10 Day Notice, if applicable, which must be served upon the tenant in accordance with the *Act*.

#### Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss

that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$600.00 for each month from October to November 2014 and March to April 2015. Therefore, I find that the landlord is entitled to \$2,400.00 in rental arrears for the above period.

The landlord did not apply for a future monetary loss of rent of \$600.00 for May 2015, at the time he filed his application on April 9, 2015. The tenant did not have notice that the landlord was intending to amend his claim to add this amount at the hearing since the tenant did not attend the hearing. Accordingly, as the tenant has the right to know the full extent of the landlord's claims and the case to meet prior to the hearing, I decline to amend the landlord's application to add a loss of rent of \$600.00 for May 2015. The landlord may make a future application for dispute resolution to recover this amount.

As the landlord was only partially successful in his Application, I decline to award him the \$50.00 filing fee paid for the Application.

### Conclusion

The landlord's application for an order of possession based on the 10 Day Notice, dated March 16, 2015, is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$2,400.00 against the tenant as follows:

| Item                        | Amount            |
|-----------------------------|-------------------|
| Unpaid October 2014 Rent    | \$600.00          |
| Unpaid November 2014 Rent   | 600.00            |
| Unpaid March 2015 Rent      | 600.00            |
| Unpaid April 2015 Rent      | 600.00            |
| <b>Total Monetary Award</b> | <b>\$2,400.00</b> |

The landlord is provided with a monetary order in the amount of \$2,400.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 22, 2015

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Residential Tenancy Branch

