



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with cross applications by way of a teleconference call. The tenant applied for more time to dispute a Notice to End Tenancy and an Order of Possession of the property. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The landlord appeared at the hearing but the tenant did not appear despite leaving the teleconference call open for at least 20 minutes.

The landlord provided a registered mail receipt, including tracking number, as proof the landlord's hearing package was sent to the tenant at the rental unit on April 17, 2015. The landlord testified that the tenant continued to reside at the rental unit until May 10, 2015. I was satisfied the landlord had served the tenant in a manner that complies with the Act and I continued to hear from the landlord in the absence of the tenant.

Since the tenant has vacated the rental unit and the landlord has regained possession of the unit, the landlord no longer requires an Order of Possession and I do not provide one to the landlord with this decision.

Given the tenant's failure to appear at the scheduled hearing, I dismissed the tenant's Application.

The remainder of the hearing dealt with the landlord's monetary claims against the tenant. During the hearing, the landlord orally requested that the landlord's Application be amended to include a request to retain the security deposit in partial satisfaction of unpaid and/or loss of rent. I found this request to be non-prejudicial to the tenant as it would reduce the balance of rent owed to the landlord and I permitted the amendment. Although the landlord submitted that the tenant owes the landlord well in excess of \$5,000.00 in unpaid rent the landlord limited her request for a Monetary Order to \$5,000.00.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent from the tenant in the amount claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The month-to-month tenancy commenced October 15, 2014 and the tenant paid a security deposit of \$875.00. The tenant was required to pay rent of \$1,750.00 on the 1<sup>st</sup> day of every month.

The tenant failed to pay rent for December 2014 and on January 22, 2015 the tenant gave the landlord a cheque in the amount of \$3,250.00 to pay for rent for December 2014 and January 2015. The tenant had also provided to the landlord a rent cheque for February 2015 in the amount of \$1,750.00. Both cheques were returned in February 2015 due to insufficient funds.

The landlord served the tenant with an older version of a Notice to End Tenancy on February 23, 2015 which the landlord later determined was invalid.

The tenant failed to pay any rent for March 2015 and on March 31, 2015 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent, in the approved form, on the tenant's door with a stated effective date of April 12, 2015. The tenant did not pay the outstanding rent but did file her Application for Dispute Resolution on April 10, 2015.

The tenant did not pay any rent for April 2015 and on April 13, 2015 the landlord filed this Application for Dispute Resolution. The tenant did not pay any rent for May 2015 and vacated the rental unit on May 10, 2015.

The landlord submitted that she is owed rent of \$8,750.00 in unpaid rent for the months of December 2014 through April 2015.

The landlord provided copies of the following documents as evidence for this proceeding: the tenancy agreement; the returned cheques and bank notices; the 10 Day Notice dated March 31, 2015; a signed Proof of Service of the 10 Day Notice; a Monetary Order worksheet; and, registered mail receipt.

### Analysis

The Act requires that a tenant pay rent to the landlord when due in accordance with their tenancy agreement. Where a tenant does not pay rent that is due the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

Pursuant to section 52 of the Act, any Notice to End Tenancy issued by a landlord must be in the approved form. Upon review of the 10 Day Notice issued on March 31, 2015, I am satisfied that it was in the approved form. Since the 10 Day Notice was posted on the door on March 31, 2015 it is deemed to be received by the tenant three days later. Therefore, the effective date of

the Notice should have read April 13, 2015 and the Notice automatically corrects to reflect that date pursuant to section 53 of the Act.

A tenant who receives a 10 Day Notice has five days to pay the outstanding rent or file an Application to dispute it. Since the tenant did not pay the rent within five days of receiving the Notice and did not present a legal basis for withholding rent I find the tenancy ended on April 13, 2015. As such, I find the landlord has established an entitlement to collect rent from the tenant for the months up to and including April 2015.

Based upon review of the tenancy agreement, the returned cheques, the 10 Day Notice, and the undisputed testimony of the landlord, I find the tenant was obligated to pay the landlord rent of \$1,750.00 every month and the tenant failed to fulfill this obligation for the months of December 2014 through April 2015. Therefore, I find the landlord has established that she is owed \$8,750.00 by the tenant as submitted by the landlord.

In light of the above, I authorize the landlord to retain the tenant's security deposit of \$875.00 in partial satisfaction of the unpaid rent and I provide the landlord with a Monetary Order in the amount of \$5,000.00 as the landlord limited her request for a Monetary Order to that amount.

Although the tenant remained in possession of the rental unit into the month of May 2015, the landlord did not claim for loss of rent for May 2015. The landlord is at liberty to file another Application if she so chooses to pursue the tenant for loss of rent for May 2015.

### Conclusion

The landlord has established that the tenant owes the landlord \$8,750.00 in unpaid rent for the months of December 2014 through April 2015. The landlord been authorized to retain the tenants \$875.00 security deposit in partial satisfaction of the rent owed to the landlord. The landlord has also been provided a Monetary Order in the amount of \$5,000.00, as requested.

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 27, 2015

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Residential Tenancy Branch

