



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMI REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Preliminary Issue: Service:**

Both parties attended and the tenant said she never received the Notice to end Tenancy dated April 8 2015 taped on the door but she did receive the Application for Dispute Resolution by registered mail on May 13, 2015.

The property manager provided proof of service of the Notice to End Tenancy on April 8, 2015; it was witnessed by the building manager. The property manager had written on the bottom of the Proof of Service that "The Tenant refused to sign proof of service. Copy attached to door". I find the landlord's evidence more credible than the tenant's as both managers were forthright in their testimony and had made notes on the signed Proof of Service at the time. I find the tenant was served with the Notice to End Tenancy taped on her door on April 8, 2015 (deemed received on April 11, 2015 pursuant to section 90 of the Act.)

The landlord's Application was filed on April 20, 2015 but not sent by registered mail until May 11, 2015 and received by the tenant on May 13, 2015. The tenant objected this was out of time according to the Act and she did not have sufficient time to provide her evidence. The landlord pointed out that she had had 20 days but really did not have evidence as she claimed. Nevertheless, I find the tenant had a valid objection pursuant to section 59(3) of the Act.

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

The tenant was issued a Notice to End Tenancy dated April 8, 2015 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The tenant said her tenancy commenced in 2013 but the landlord said they took over management of the building and only have the lease dated from September 2014, a security deposit of \$362.50 was paid and rent is currently \$725 a month. The landlord is claiming the rental arrears of \$6,410 as they said the rent had not been paid since September 2014. The tenant said she paid \$745 in cash each month to the building manager but never got a receipt.

The landlord provided a rental statement from September 2014 showing rent was invoiced as \$745 monthly from September 2014 until April 2015; at that time, the landlord said they realized the tenant's rent on the lease was \$725 monthly so they credited her account with \$160 for the invoiced overcharge. Apparently the additional \$20 a month was for a parking stall which the tenant does not have.

The building manager said he collects rent each month, often in cash. He gives receipts, he records the unit number and amount and sends the record by fax to the head office immediately; he also deposits the money in the bank. He gave evidence that this tenant has paid nothing since September 2014. He said she had lived there prior to the current lease with another person but that person had left and no money has been paid to him since September 2014. When queried about the accumulation of outstanding rent, the property manager said they had begun to take action before but the individual hired to do it did not prepare the necessary documents before leaving. She said the Application was served late because her management had contemplated proceeding by Direct Request but when they discovered some time issues, they decided to proceed by oral hearing and so did not send the Application until May 11, 2015.

In evidence is a Rent Statement, the Notice to End Tenancy, Proof of Service and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis**

Order of Possession

I find that the landlord is entitled to an Order of Possession. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. Although the tenant contended she never received the Notice to End Tenancy, I find the landlord's evidence more credible (as stated above) that she received it posted on her door on April 8, 2015. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective June 15, 2015.

#### Monetary Order

I find the tenant had a valid objection that the Application for Dispute Resolution was not served within the three days after filing on April 20, 2015 (section 59 of the Act). As it was not received by registered mail until May 13, 2015, she contended she had not time to file her evidence. Therefore I dismiss the Application of the landlord for a monetary order with leave to reapply.

#### Conclusion:

I find the landlord is entitled to an Order of Possession effective June 15, 2015 and to recover filing fees paid for this application. I dismiss the Application of the landlord for a monetary order as it was served late on the tenant and give the landlord leave to reapply.

**I HEREBY ORDER that the landlord may recover the filing fee of \$50 by deducting it from the security deposit which will leave a balance of \$312.50 security deposit in trust for the tenant.**

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: June 03, 2015

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Residential Tenancy Branch

