



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, MNR

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

The hearing was originally scheduled as a Direct Request proceeding. That proceeding was adjourned to a participatory hearing due to some questions raised about the landlord's documentation provided. The landlord had served the tenant by registered mail on April 21, 2015. The landlord served the tenant again with the new Notice of Hearing and other documents on May 10, 2015 and June 02, 2015. Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

The landlord's agent testified that this month to month tenancy started on January 01, 2012. Market rent for this unit is \$1,200.00 per month. The tenant received a rent subsidy and initially paid an amount of \$510.00. As rent is geared to income the rent increased to \$595.00. In 2014 the tenant was advised to send in documentation to continue with the rent subsidy for September, 2014. The tenant failed to do so and therefore her rent increased to \$800.00 per month from September, 2014. Rent is due on the 1st of each month.

The landlord's agent testified that the tenant failed to pay all the rent due from August, 2014 to June, 2015. The landlord's agent testified that there are now arrears of \$6,815.00. The landlord provided testimony concerning the amount of rent due for each of the months between August, 2014 and June, 2015 as follows:

August, 2014	\$210.00
September, 2014	\$800.00
October, 2014	\$800.00
November, 2014	\$205.00
December, 2014	\$205.00
January, 2015	\$800.00
February, 2015	\$800.00
March, 2015	\$800.00
April, 2015	\$800.00
May, 2015	\$205.00
June, 2015	\$800.00
Total amount owed	\$6,425.00

The landlord issued a 10 Day Notice to End Tenancy (the Notice) for unpaid rent on April 02, 2015. This was served by registered mail to the tenant on that date and was deemed served five days later. The Notice stated that the tenant owed rent of \$6,015.00 which was due on April 01, 2015. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 17, 2015. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did make a payment towards rent for May of \$595.00 and this was accepted for use and occupancy only. The landlord's agent orally requested to amend the application to include the unpaid rent for May and June, 2015.

The landlord's agent requested an Order of Possession to take effect 14 days after service upon the tenant to allow the tenant time to vacate the rental unit. The landlord also seeks a Monetary Order to recover the unpaid rent.

### Analysis

Section 26 of the *Residential Tenancy Act* (Act) 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.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlord's claim I find from the documentary evidence and testimony of the landlord's agent that the tenant has failed to pay all the rent due from August, 2014 to June, 2015. The 10 Day Notice shows an amount owed of \$6,015.00 due on April 01, 2015; however; from the calculations made during the hearing for the rent arrears, as orally provided by the landlord's agent, this figure is inaccurate. The correct amount owed at that time is \$5,420.00. Furthermore, the landlord's agent testified that the total amount due for unpaid rent for the period between August, 2014 and June, 2015 is \$6,815.00; however, using the landlord's own figures provided for the hearing I have calculated that the rent owed up to and including June, 2015 is \$6,425.00.

I have allowed the landlord to amend their application to include the unpaid rent for May and June, 2015 as the tenant failed to vacate the rental unit by the effective date of the Notice and would be aware that rent should be paid on the 1<sup>st</sup> of each month. Consequently, the landlord will receive a Monetary Order to the sum of **\$6,425.00** pursuant to s. 67 of the Act.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice stated that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice within five days.

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 effective date of the Notice and grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,425.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **14 days** after service upon the Respondent. This Order must be served on the Respondent. If the Respondent fails to comply with this Order, the Order may be filed in the Supreme 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: June 12, 2015

---

Residential Tenancy Branch

