



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, FF, ET

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee. The Landlord also applied for an early end to the tenancy.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. No issues were raised by the parties in relation to the service of the Landlord’s Application and the parties’ evidence to each other prior to the hearing.

### Preliminary Issues

At the start of the hearing the Tenant confirmed that she had vacated the rental unit at the end of May 2015 in response to a notice to end the tenancy for the Landlord’s use of the property. The Landlord confirmed this and withdrew his Application for an Order of Possession as he had received vacant possession of the rental unit from the Tenant. The Landlord also confirmed that his Application to end the tenancy was a clerical error. As the tenancy has already ended, I dismissed this portion of the Landlord’s Application.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence and make submissions to me. I have considered the evidence provided by the parties but I have only documented the evidence which I relied upon to make findings in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent for April 2015?

### Background and Evidence

The parties agreed that this tenancy started on April 1, 2004 on a month to month basis. No written tenancy agreement was completed and no security deposit was requested or paid by the Tenant. Rent between the parties was established in the amount of \$850.00 payable on the first day of each month. The tenancy ended when the Tenant moved out on May 31, 2015 after being served with a notice to end tenancy for Landlord's use of the property; the Tenant received compensation under this notice by withholding rent for May 2015 pursuant to Section 51(1.1) of the *Residential Tenancy Act* (the "Act").

The Landlord testified that on April 1, 2015, the Tenant failed to pay rent. As a result, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 30, 2015 on the rental unit door. The Notice was provided into written evidence and indicates an amount of \$850.00 due on April 1, 2015. The Landlord now seeks to recover this unpaid rent back from the Tenant.

The Tenant confirmed receipt of the Notice and acknowledged that she had withheld rent for April 2015 because the Landlord owed her costs associated with renovations she had completed to the rental unit. The Tenant testified that she had a verbal agreement with the Landlord that he would reimburse her for these costs. The Tenant was asked whether she had anything in writing from the Landlord that allowed her to withhold April 2015 rent for these costs. The Tenant explained that the Landlord had verbally agreed to this.

The Landlord disputed this and testified that at no time did he consent to the Tenant not paying her April 2015 rent which is the reason why he issued the Tenant with the Notice and made the Application.

### Analysis

The Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Based on the undisputed testimony of both parties that the Tenant paid a fixed amount of rent to the Landlord on a month to month basis, in absence of a written tenancy agreement, I find that an oral tenancy agreement was established between the parties which is recognized and enforceable under the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the tenant has a right to withhold or deduct rent.

In determining the Landlord's monetary claim for unpaid rent, the Tenant did not pay rent for April 2015. The Landlord disputed the Tenant's testimony that the Tenant was allowed to withhold April 2015 rent for renovations costs. In the absence of such written authority by the Landlord for the Tenant to pay rent, I find the Tenant disclosed no authority under the Act to withhold rent for the reason that the Landlord owed her money for renovation costs. Therefore, the Tenant is liable to pay the Landlord unpaid rent for April 2015 in the amount of **\$850.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$900.00**.

The Landlord is issued with a Monetary Order in the amount of **\$900.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment in accordance with the Landlord's instructions.

### Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord is granted a Monetary Order in the amount of \$900.00 to recover unpaid rent and the filing fee. The Landlord's Application for an Order of Possession is dismissed as the Tenant has now vacated the rental unit.

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 26, 2015

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Residential Tenancy Branch

