



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, MNDC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on April 15, 2015. The rent is \$800.00 per month due in advance on the last day of each month. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord stated that on April 14, 2015, the tenant paid a security deposit in the amount of \$400.00 and rent for half of April, in the amount of \$300.00. The landlord provided copies of receipts that were provided to the tenant. The landlord also stated that the tenant did not pay the balance of rent owed for April in the amount of \$100.00. The tenant stated that she had paid but had not received a receipt.

The landlord also filed a copy of a receipt dated April 27, 2015 in the amount of \$800.00 which consisted of rent for the month of May 2015.

The landlord stated that the tenant did not pay rent for June on the last day of May as she was required to. On June 01, 2015, the landlord served the tenant with a notice to end tenancy for \$800.00 in unpaid rent.

The tenant argued that she had paid rent on May 27, 2015 and filed a copy of her bank account transactions. The transactions indicate that on May 27, 2015, the tenant made a deposit of \$925.00 and withdrew \$880.00 that same day. The bank account balance is mostly zero and despite other transactions of deposits and withdrawals, the balance continues to show as zero, for most part.

The landlord pointed out that the statement provided by the tenant does not indicate her name or the name of the financial institution. The landlord suggested that the statement of accounts was not authentic.

The tenant agreed that she had not paid rent for July 2015.

### **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on June 01, 2015. The tenant disputed the notice in a timely manner and stated that she had paid rent for June in cash, on May 27, 2015, but did not receive a receipt from the landlord. I now have to determine whether the tenant paid rent on May 27, 2015.

The landlord filed copies of receipts provided to the tenant for payments made prior to May 27, 2015. The tenant stated that the landlord did not provide a receipt on May 27, 2015. The tenant relies on the copy of her bank transactions. Upon review of the bank statement, I find that the single page filed by the tenant is page 3 of 4. There is no information on the page that indicates the name of the financial institution or the account holder. In addition, despite several transactions recorded on the account, the balance shows as zero for most part.

The statement shows that a deposit and withdrawal were made on May 27, 2015. Even if I accept the bank statement as true evidence, a withdrawal does not prove that the tenant made a payment to the landlord. It simply shows that the tenant withdrew this amount from her bank account.

The landlord filed receipts for all payments that he received from the tenant prior to May 27, 2015. The landlord stated that it is his practice to provide receipts for payments made in cash.

After having heard the testimony of both parties, I find that I prefer the testimony of the landlord. Based on the findings mentioned above, I find on a balance of probabilities that it is more likely than not that the tenant did not make a payment of rent for June on May 27, 2015.

The tenant received the notice to end tenancy on June 01, 2015 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

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. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

The tenant agreed that she had not paid rent for July 2015. Therefore I find that the landlord is entitled to rent for June and July 2015 in the amount of \$1,600.00. Since the landlord has proven his case, I award him the recovery of the filing fee of \$50.00. Overall the landlord has established a claim for \$1,650.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$1,650.00**.

The tenant's application is dismissed in its entirety.

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: July 30, 2015

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Residential Tenancy Branch

