



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Landlord's Application and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. The Landlord testified that the Application Materials were served on the Tenant by registered mail on Jun 19, 2015. Introduced in evidence was a copy of the receipt for the registered mail as well as the tracking number. Section 90 of the *Act* provides that documents served in this way are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as of June 24, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

The Landlord testified as to the terms of the tenancy.

The tenancy began October 2012. Monthly rent was payable in the amount of \$1,585.00. A security deposit in the amount of \$792.50 was paid at the beginning of the tenancy.

The Landlord testified that the Tenant failed to pay rent at various times throughout the tenancy beginning in April 2013. He further testified that although the Tenant also paid extra at times, at the time of the hearing the Tenant owed \$6,460.00 in unpaid rent.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 15, 2015 the amount of \$7,025.00 was due as of April 1, 2015 (the "Notice").

The Landlord testified that he posted the Notice to the rental unit door on April 18, 2015. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of April 21, 2015. Pursuant to the Act, the effective date of the Notice automatically corrects to May 1, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 26, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As April 26, 2015 is a Sunday, the Tenant had until April 27, 2015 to apply for dispute resolution.

The Landlord testified that the Tenant did not pay the outstanding rent, nor did the Tenant apply for dispute resolution.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the Landlord's undisputed testimony as to the outstanding rent, and find that the Landlord has established a total monetary claim of \$6,560.00 comprised of \$6,460.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$792.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$5,767.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 17, 2015

