



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**OPR, MNR, FF**

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the parties confirmed that the tenancy has ended. The tenant said she vacated on August 31, 2015. The tenant was to meet the landlord's son to give him the keys but he did not arrive; the landlord was away at the time. The tenant agreed she will return the keys to the landlord within the day.

The landlord provided the Residential Tenancy Branch (RTB) with 38 pages of evidence. That evidence was not given to the tenant as she had previously been provided copies of the documents. I explained that an applicant is required to provide the respondent with an identical copy of evidence the applicant wishes to reply upon during the hearing. That evidence must be served in accordance with the RTB Rules of Procedure. As the landlord did not serve the tenant with a copy of the evidence, that evidence was set aside. The landlord was at liberty to make oral submissions.

The tenant served the landlord with 12 pages of evidence, left in the landlords' mail box on September 1, 2015. The landlord said she did not receive that evidence. That evidence was set aside, as receipt was in dispute. The tenant was at liberty to make oral submissions.

The hearing proceeded based on oral submissions only.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

### Background and Evidence

The parties agreed that the tenancy commenced in April 2012. The tenant said rent was \$2,400.00 per month, the landlord said it \$2,300.00 per month. The parties agreed that a security deposit in the sum of \$1,200.00 was paid.

The landlord said there had been a verbal agreement to increase the rent during the tenancy; a Notice of Rent Increase was not issued.

The landlord said the tenant last paid full rent owed in April, 2015, in the sum of \$2,400.00. In May 2015 the tenant paid \$1,950.00. No rent has been paid since that time.

The tenant said that all rent has been paid to August 1, 2015, inclusive. The tenant said she gave the rent, in cash, to the landlord who was present at the hearing. The tenant stated the rent was paid in the same manner as it had always been paid throughout the tenancy. The tenant would take the rent to the landlord, give her the cash and no receipt would be issued. The tenant never requested a receipt.

Initially the landlord agreed that she did not issue receipts; then later in the hearing the landlord said that at the start of the tenancy she had given some receipts. The landlord said that the tenant never asked for receipts.

Toward the conclusion of the hearing the interpreter began to provide testimony in relation to the fact she had been a witness to requests made by the landlord that rent be paid. I explained that as the interpreter was present throughout the hearing as only an interpreter any submissions made, after hearing all of the testimony, would be given very little weight. I explained that a fair hearing process would not allow a witness to be present throughout a hearing and to then make submissions. The interpreter declined to offer additional testimony.

The tenant said she vacated as the landlord told her she was going to sell the home and that the tenant must move out. The landlord understood the tenant was looking for a new rental unit and would be vacating. There had been some disagreement when the landlord had requested frequent open houses over weekends. In May the landlord had asked the tenant to sign a document agreeing to regular open houses.

### Analysis

Proving a claim in damages requires it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

The landlord has the burden of proving the claim for unpaid rent to a degree that is believable. I must be satisfied, on the balance of probabilities that the rent was not paid.

My assessment and finding is based on the evidence supplied by each party; through oral testimony. I have considered the evidence given by each party and weighed the credibility and likelihood of each submission.

Section 26(2) of the Act requires a landlord to provide the tenant with a receipt for rent paid in cash. The landlord has confirmed that receipts for cash rent payments made

throughout the tenancy were not issued to the tenant. The landlord provided contradictory testimony, first stating she had not given receipts and later saying that at the start of the tenancy some receipts had been issued.

This contradictory testimony was not what appeared to be the result of a language barrier; the landlord had a competent translator at the hearing. The landlord understood the question posed, provided an answer and then later in the hearing changed her answer. This inconsistency cause me to find the landlords' submission less credible than that of the tenant.

The tenant provided what I found to be forthright, consistent submissions. The rent had always been paid in cash and the tenant had trusted the landlord, without hesitation. The tenant had relied upon the payment of rent via cash, with no receipts issued as a record. This leads me to place more responsibility on the landlord to prove non-payment, rather than the tenant having to prove payment was made.

There was an absence of any records of rent paid, receipts issued as required by the Act or any other evidence in support of the claim that rent had not been paid. The absence of corroborating evidence, combined with the inconsistent testimony of the landlord leads me to conclude, on the balance of probabilities, that the claim for unpaid rent is not proven.

Therefore, I find that the claim for unpaid rent is dismissed.

### Conclusion

The claim for unpaid rent is dismissed.

This decision is final and binding on the parties 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: September 16, 2015

---

Residential Tenancy Branch

