



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEIGHBOURHOOD HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord society attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on July 15, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and orally provided a tracking number assigned by Canada Post. The landlord was permitted to provide to me by facsimile a copy of the Canada Post cash register receipt and Registered Domestic Customer Receipt after the hearing concluded. That documentation has been received and I find that it confirms the testimony of the landlord's agent. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 15, 2015 and the tenant still lives in the rental unit. Rent is subsidized and the tenant's portion is \$210.00 per month payable on the 1<sup>st</sup> day of each month and the landlord charged a pro-rated amount for the first month. The landlord collected a security deposit from the tenant in the amount of \$368.50 on March 6, 2015 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord's agent further testified that the tenant failed to pay the pro-rated amount of \$110.00 for January, 2015, which was calculated by the number of days in the month, but paid the full rent for February on February 13, 2015. The tenant paid the security deposit and an additional \$105.00 toward rent on March 6, 2015. The tenant paid \$260.00 on April 1, 2015 but nothing in May or June. On July 31, 2015 the tenant made a payment of \$310.00 but no rent has been paid since. The tenant is currently in arrears the sum of \$910.00 to the end of September, 2015.

The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 9, 2015 by posting it to the door of the rental unit and a copy of both pages of the 2-page form have been provided. The notice is dated June 9, 2015 and contains an effective date of vacancy of June 22, 2015 for \$590.00 of unpaid rent that was due on June 1, 2015. The landlord has not been served with an application by the tenant disputing the notice and the tenant has not paid any rent since it was served.

The landlord seeks an Order of Possession and a monetary order in the amount of \$960.00 for unpaid rent, and recovery of the \$50.00 filing fee. The landlord does not seek an order allowing the landlord to keep the security deposit in partial satisfaction of the claim and prefers to deal with it in accordance with the *Residential Tenancy Act* after the tenancy has ended.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit. In this case, I am satisfied that the tenant was served with the notice on June 9, 2015 which is deemed to be served 3 days later, or June 12, 2015. The tenant did not pay the rent and did not dispute the notice, and therefore, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

With respect to the monetary claim, I have reviewed the tenancy agreement, which I find is inconsistent with the testimony of the landlord's agent. The tenancy agreement shows that the term was fixed, commencing on January 15, 2015 and ending on April 15, 2015 at

which time the tenancy was to end. Further, the tenancy agreement shows that rent in the amount of \$209.36 is payable on the 1<sup>st</sup> day of each month, not \$210.00. Further, the tenancy agreement specifies a security deposit in the amount of \$356.00.

The landlord has also provided a copy of a tenant ledger showing payments of \$210.00 on February 13, 2015; \$473.50 on March 6, 2015 and \$260.00 on April 1, 2015. The ledger goes to July 1, 2015. Since the landlord's agent has been mistaken with the tenancy agreement specifics, I find that the evidentiary material should be relied upon. Also, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is consistent with the tenant ledger. In the circumstances, and having read the material and having heard the landlord's agent, I find as follows:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
January 15, 2015	Rent due	\$108.06	0	\$108.06
February 1, 2015	Rent due	\$209.36	0	\$317.42
February 13, 2015	Rent paid		\$210.00	\$107.42
March 1, 2015	Rent due	\$209.36	0	\$316.78
March 6, 2015	Payment of Rent and \$356.00 Security Deposit		\$117.50	\$199.28
April 1, 2015	Rent due	\$209.36	\$260.00	\$148.64
May 1, 2015	Rent due	\$209.36	0	\$358.00
June 1, 2015	Rent due	\$209.36	0	\$567.36
July 1, 2015	Rent due	\$209.36	0	\$776.72
July 31, 2015	Rent paid		\$310.00	\$466.72
August 1, 2015	Rent due	\$209.36	0	\$676.08

I also find that the landlord is entitled to half a month's rent for September, 2015 in the amount of \$104.68. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee.

The landlord has not requested an order permitting the landlord to keep the security deposit and I leave it to the parties to deal with it in accordance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential tenancy Act* in the amount of \$830.76.

These orders are final and binding and may be enforced.

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: September 10, 2015

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Residential Tenancy Branch

