



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and their Application by sending it registered mail on 29, 2015. Under the Act documents served this way are deemed served five days later. I find the Tenant was duly served in accordance with the Act.

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.

### Issue(s) 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

Based on the testimony of the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on June 29, 2015, by posting it on the door (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. 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.

The Landlord testified that the Tenant had paid the rent as set out in the Notice; however, the Landlord was unable to recall when the rent was paid. He testified he gave the Tenant a receipt for use and occupancy only.

The Landlord further testified that the Tenant is now up to date for rent payments, although he has been late paying rent on several occasions. Again, the Landlord did not have the dates of late payment of rent with him at the hearing.

The Landlord testified his son would have the information. The attempt to call his son into the hearing as a witness was not successful. Furthermore, it appears there was a problem with the phone system and toward the end of the hearing the Landlord and I could no longer communicate through the teleconference system.

Nevertheless, prior to the hearing being concluded, I had explained to the Landlord that no order of possession would be granted today, since the Landlord was unable to testify as to the day the rent was paid under the Notice.

### Analysis

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

The Tenant has paid the outstanding rent although the Landlord was unable to testify to the date it had been paid. Under section 46(4) of the Act, a Tenant may cancel a 10 day Notice to End Tenancy for unpaid rent by paying the rent within 5 days. If the Tenant pays the rent within 5 days the Notice has no effect. Even if the Landlord declares this was just for use and occupancy only, the Act provides that if the rent is paid within the 5 days then the Notice has no effect.

Therefore, as the Landlord was unable to tell me what day the rent was paid, I am unable to find that the 10 day Notice to End Tenancy is valid.

For these reasons I find I am unable to grant the Landlord an order of possession and dismiss the Application of the Landlord with leave to reapply.

Lastly, I find the Tenant caused the Landlord to have to file this claim and incur a cost of \$50.00 for the filing fee for the Application. Therefore, I find that the Landlord has established a total monetary claim of **\$50.00** to recover the fee paid by the Landlord for this application and I grant the Landlord an order for this amount.

The order of \$50.00 may be deducted from the security deposit held or filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord did not know when the Tenant had paid the rent after the Tenant was served with the 10 day Notice to End Tenancy. If the Tenant paid the rent within 5 days of being served with the Notice, then the Notice would have no effect under section 46(4). Therefore, I am unable to find the Notice was valid and the Landlord's Application must be dismissed with leave to reapply.

The Landlord may recover the \$50.00 filing fee for the cost of the Application from the security deposit held or the Landlord may enforce the order in Provincial Court.

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: September 22, 2015

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Residential Tenancy Branch

