



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, ET, 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; for an order ending the tenancy early; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch however the tenant did not provide a full copy of the tenant's evidence to the landlord. Therefore, that evidence is not considered in this Decision.

The parties were given the opportunity to question each other with respect to the testimony and the evidence of the landlord, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the application for a monetary order for unpaid rent or utilities.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled under the *Residential Tenancy Act* to an order of Possession for unpaid rent?
- Should the landlord obtain an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on May 1, 2015, although the tenant was permitted to move in early. The tenancy agreement specified that the fixed term would end when the rental unit sells. The rental unit has not sold and the tenant

still resides there. Rent in the amount of \$500.00 per month is payable on the 1<sup>st</sup> day of each month and there are currently no rental arrears. No pet damage deposit or security deposit were collected.

The landlord further testified that the tenant fell into arrears of rent and on September 26, 2015 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) and had a friend as a witness. A copy of the first page of the 2-page notice has been provided and it is dated September 26, 2015 and contains an effective date of vacancy of October 6, 2015 for unpaid rent in the amount of \$325.00 that was due on September 1, 2015. The notice also states that \$75.00 is overdue from May and \$250.00 for September. Also provided is a Proof of Service document which states that the landlord served the tenant by posting the notice to the door of the rental unit on September 26, 2015.

The landlord received \$325.00 from the tenant on October 6, 2015 and another \$500.00 on October 9, 2015. No receipts were issued because the rent is paid directly to the landlord from a government Ministry.

The landlord also testified that her brother attended the rental unit to conduct repairs on April 8, May 5, May 15, and June 20, but the tenant impeded the work. The landlord wants the tenant to move out because he is not keeping the rental unit in a selling condition.

**The tenant** denies that he disallowed the landlord's brother entry on several dates during the tenancy and testified that repairs are required. The tenant withheld rent for lack of repairs but as soon as the tenant discovered that he had to pay the rent even if the landlord didn't make the repairs, the tenant paid the rent.

The tenant also testified that rent for September, 2015 was paid in September, and in October the tenant found out that he had to pay the rent and paid it. The tenant has suffered an aneurism and does not recall the dates.

### 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 apply for dispute resolution to dispute the notice. If the tenant pays the rent within 5 days, the notice is of no effect.

In this case, the landlord testified that the tenant was personally served with the notice on September 26, 2015, however the Proof of Service document provided by the

landlord states it was served by posting it to the door of the rental unit. In the circumstances, I am not certain how the notice was served. The landlord testified that the tenant paid \$325.00 on October 6, 2015, and the tenant states it was paid in September. The landlord has not issued any receipts because the rent money is sent to the landlord directly by a government Ministry. However, the landlord accepted the payment of the rent, and rent for the following month. Where rent is accepted, the landlord is advised to provide a record of it, particularly once a landlord serves a notice to end the tenancy for unpaid rent. If a landlord receives rent, the landlord may be considered to have reinstated the tenancy unless the landlord ensures that the receipt or some other writing notifies the tenant that it is being received “for use and occupancy only” and does not serve to reinstate the tenancy.

The parties agree that there are currently no rental arrears, and the landlord has only provided the first page of the 2-page notice, and has provided testimony and evidentiary material that contradict each other. I am not satisfied that the landlord has established that the notice was issued in accordance with the *Residential Tenancy Act*, and has failed to establish that rent wasn't paid within 5 days of service or deemed service.

The landlord's application is hereby dismissed.

### Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The balance of the landlord's application is hereby dismissed.

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: December 15, 2015

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Residential Tenancy Branch

