



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	OPR, MNR, FF (Landlord's Application) CNR, O, FF (Tenant's Application)
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### 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.

The Tenant also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlord's agent and property manager, D.L., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

D.L. testified he served the Tenant with the Notice of Hearing and their Application on December 11, 2015 by registered mail. D.L. testified that the Tenant accepted delivery of the registered mail on December 15, 2015 and signed for receipt of the documents. Based on the undisputed testimony of D.L. I find the Tenant was duly served as of December 15, 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

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began May 1, 2015. Monthly rent was payable in the amount of \$885.00. A security deposit in the amount of \$442.50 was paid on April 23, 2015

The Tenant failed to pay rent for the month of November 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 12, 2015 in which the amount of \$909.00 was noted as due as of November 1, 2015 (the "Notice"). D.L. testified that this \$909.00 amount included rent of \$885.00 as well as a \$25.00 late fee and a \$1.00 credit from previous months. The residential tenancy agreement was also introduced in evidence which included an Addendum; paragraph 2 of the addendum authorized the Landlord to charge a late fee of \$5.00 per day to a maximum of \$25.00 per month.

Based on the testimony of D.L., I find that the Tenant was served with the Notice on November 12, 2015 by posting to the rental unit door. 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 November 15, 2015. The effective date of the Notice automatically corrects to November 25, 2015 pursuant to section 53 of the *Residential Tenancy Act*.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 20, 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.

The Tenant filed a Tenant's Application for Dispute Resolution on November 18, 2015.

M.J. testified that the Tenant also did not pay rent for December 2015 or January 2016.

D.L. testified that as of the date of the hearing the amount of \$2,679.00 remains outstanding including the following:

November 2015 rent	\$885.00
November 2015 late fee	\$25.00

December 2015 rent	\$885.00
January 2016 rent	\$885.00
<i>Less credit</i>	<i>\$1.00</i>
TOTAL outstanding as of date of hearing	\$2,679.00

D.L. confirmed that the Tenant had not been charged the \$25.00 late fee for December and January 2016.

### 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 as he failed to attend the hearing his application to dispute the Notice is dismissed. He 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 find that the Landlord has established a total monetary claim of \$2,729.00 comprised of \$2,679.00 for rent for the months of November 2015, December 2015 and January 2016, \$25.00 for the late fee in November 2015, less a credit of \$1.00, and the \$50.00 fee paid by the Landlord for this application.

I grant the Landlord an Order under section 67 for amount due of **\$2,729.00**. 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 attend 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 and is granted a Monetary Order for the amount of **\$2,729.00**.

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: January 14, 2016

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Residential Tenancy Branch

