



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Properties Management Corporation  
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 company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant did not attend the hearing, however was represented at the hearing by an agent who attended 15 minutes late and during the testimony of the landlord's agent. The tenant's agent also gave affirmed testimony and the parties were given the opportunity to question each other and give submissions.

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

The landlord's agent mentioned during the course of the hearing that the tenant's evidentiary material had not been received. The tenant's agent testified that the landlord company was provided with the material. A copy was received by the Residential Tenancy Branch on March 18, 2016, and I am satisfied that the landlord company has been provided with the material, and it is considered in this Decision.

Further, during the course of the hearing, the landlord's agent referred to evidentiary material that was received by the Residential Tenancy Branch earlier this week but was not, according to the landlord's agent, provided to the tenant. Therefore, I decline to consider it. The landlord's application to provide additional evidence after the hearing commenced was denied. All other evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is: Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on May 1, 2003 and the tenant still resides in the rental unit. Rent in the amount of \$765.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. That amount is payable commencing January 1, 2016 by order of the director, Residential Tenancy Branch, and a copy of that Decision has been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$280.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that on March 1, 2016 the tenant didn't pay rent and the landlord's agent served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 2, 2016 by posting it to the door of the rental unit and placing a copy in the tenant's mailbox. A copy has been provided, and it is dated March 2, 2016 and contains an effective date of vacancy of March 12, 2016 for unpaid rent in the amount of \$765.00 that was due on March 1, 2016. The tenant paid the rent that evening by personal cheque and the landlord deposited it. The cheque was returned N.S.F. and the tenant re-paid the landlord on March 11, 2016. The landlord's agent gave the tenant a receipt for each of those payments marked, "For Use and Occupancy Only." A copy of the first receipt has been provided, but not the receipt for the replacement cheque. A copy of the Returned Item Advice from the bank has also been provided, and it is dated March 7, 2016, shows a copy of the unsigned cheque, and a notation that the reason for the returned item is, "insufficient funds." A copy of that document was provided to the tenant on March 11 and the tenant paid the rent that day.

The landlord's agent also testified that the tenant has paid rent for April, 2016 for which the landlord has issued a receipt showing that the money is accepted "For Use and Occupancy Only," but a copy has not been provided. The landlord has also received post-dated cheques from the tenant for May, June, July and August, 2016.

**The tenant's agent** testified that the tenant received a reminder by text message from the landlord's agent about rent being due, and the tenant paid it and then received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant then had a conversation with the landlord's agent who apologized and gave the tenant a receipt.

The bank returned the cheque on March 7 because it wasn't signed by the tenant, an over-sight, and the tenant paid the amount as soon as he learned that the cheque had been returned. The landlord notified the tenant on March 11 and had the landlord notified the tenant on March 7, the tenant would have had the opportunity to pay the rent within 5 days as required by the *Residential Tenancy Act*. The tenant's agent submits that the landlord neglected to do so deliberately because the area is being developed and the landlord is trying to have the unit vacated for that purpose. The tenant wants a working relationship with the landlord and has given the landlord's agent post-dated cheques to ensure late payments are not an issue in the future. The landlord has also collected rent for April, 2016.

On March 9, 2016 the landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenant. The notice is dated March 9, 2016 and contains an effective date of vacancy of April 11, 2016. The reason for issuing it is: "Tenant is repeatedly late paying rent." The tenant's agent testified that the tenant first learned of the returned cheque when the notice was served, and the tenant paid the rent on March 9, 2016 but the landlord didn't issue a receipt until March 11, 2016.

The tenant has also provided a written statement containing a version of events.

### Analysis

Firstly, neither party has made an application for dispute resolution with respect to the 1 Month Notice to End Tenancy for Cause. Therefore, I decline to make any orders. However, I do find that the timing of it is relevant to this hearing.

Where 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 or dispute the notice. If the tenant pays the rent, the notice is of no effect. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. Where a landlord applies for an Order of Possession based on such a notice, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*.

In this case, I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*, however, since it was served by posting it to the door of the rental unit, it is deemed to have been served 3 days later, March 5 and the effective date of vacancy is changed to March 15, 2016.

The tenant's agent testified that the tenant paid the rent before the notice was issued, and the landlord's agent disputes that stating that it was served before the tenant paid the rent. The landlord has provided a copy of a Proof of Service document stating that it was served at 1:26 p.m. and signed by a witness. The landlord's agent also signed it and it states that the landlord served the notice by posting it to the door of the rental unit and by placing a copy in the tenant's mailbox on March 2, 2016. The tenant's statement of events indicates that the tenant paid the rent on his way home from work, and upon arriving home, found a notice to end the tenancy. Therefore, I find that it was served by posting it to the door of the rental unit and in the tenant's mailbox on March 2 prior to the tenant paying the rent.

The tenant's agent testified that how the tenant learned of the returned rent cheque for March was upon receiving the 1 Month Notice to End Tenancy for Cause on March 9, 2016 and that is the day the tenant re-paid the rent. The landlord's agent testified that he provided the tenant with the returned cheque notice on March 11 and that is the day the tenant paid the rent. The landlord has also provided a Proof of Service document stating that a notice (no indication of what type of notice) was served on March 11, 2016.

Having found that the 10 Day Notice is deemed to have been served on March 5, a payment made on March 9 would make the notice ineffective, but a payment on March 11 would be beyond the 5 days provided for in the *Act*. The 1 Month Notice to End Tenancy for Cause is dated March 9, not March 11, and therefore I am inclined to agree with the tenant's agent. The landlord has not provided any evidence of what day the tenant re-paid the rent, did not explain why the notice was served 2 days after it was signed, and where it boils down to one person's word over another, the claim has not been proven, and I am not satisfied in the circumstances that the tenant didn't pay the rent within 5 days as required by the *Residential Tenancy Act*.

Therefore, the landlord's application for an Order of Possession for Unpaid Rent or Utilities 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 landlord's application for an Order of Possession for unpaid rent or utilities 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: April 22, 2016

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Residential Tenancy Branch