



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 4, 2016. The landlord has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The landlord also stated that an online search of the Canada Post Website shows that the tenant signed in receipt of the package on April 10, 2016. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that there was no signed tenancy agreement, but that the tenant had been meeting the agreed terms of \$600.00 per month payable on the 1<sup>st</sup> day of each month.

The landlord provided direct testimony that the tenant was served with a 10 Day Notice to End Tenancy (the 10 Day Notice) dated March 18, 2016 by posting it to the rental unit door on March 18, 2016. The 10 Day Notice states that the tenant failed to pay rent of \$800.00 that was due on March 1, 2016 and displays an effective end of tenancy date of March 28, 2016.

The landlord provided direct testimony that the tenant has been inconsistent in his payment of rent as shown in the submitted statement of a rental ledger showing the tenant's payment history from June 2015 to March 2016.

The landlord provided direct testimony that the tenant had made a late rent payment on April 8, 2016 of \$800.00 to the landlord. The landlord stated that no receipts/notice(s) were given to the tenant for "use and occupancy" of the rental premises in accepting the late rent payment. The landlord also stated that as of the date of this hearing the tenant is currently in arrears for \$1,200.00.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for March 2015 and was in arrears as of the date of the 10 Day Notice of \$800.00. The landlord also provided evidence that a late rent payment of \$800.00 was accepted on April 8, 2016 without any notice to the tenant for use and occupancy.

Residential Tenancy Branch Policy Guideline #11 states in part,

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only

The landlord stated that after receiving the tenant's late rent payment of \$800.00 on April 8, 2016 that no notice was given to the tenant that the landlord would still be seeking to end the tenancy. On this basis, I find that the landlord waived his intent to end the tenancy. The 10 Day Notice dated March 18, 2016 is set aside. The landlord's application is dismissed.

### Conclusion

The landlord's application is 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: May 06, 2016

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Residential Tenancy Branch