



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNDC, MNR, MNSD, OPR

### 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's agents, H.A., the regional manager, and C.T. the resident manager, appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's agent, H.A., testified that the Tenant was served the Tenant with the Notice of Hearing and their Application on May 26, 2016 by registered mail. C.T. also testified that she hand delivered a copy of the Notice of Hearing to the Tenant on May 26, 2016. H.A. confirmed that the package was returned to the Landlord as being unclaimed.

*Residential Tenancy Policy Guideline--12. Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Under section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant/Landlord was duly served as of May 31, 2016.

H.A. testified that 30 pages of documents were sent to the Residential Tenancy Branch. Those documents were not before me during the hearing. Consequently, I requested that the Landlord's agents resend this information by fax. I confirm that I received these documents on June 28, 2016 and I have considered them in making my Decision and resulting Orders.

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

C.A. testified as to the terms of the tenancy and confirmed as follows: the tenancy began September 13, 2014. Monthly rent was payable in the amount of \$780.00 payable on the first of the month. A security deposit in the amount of \$390.00 was paid on September 10, 2014.

C.A. confirmed that the Tenant has received annual rent increases such that at the time of the hearing his monthly rent was \$1,025.23.

The Tenant failed to pay rent for the month of May 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on May 4, 2016 indicating the amount of \$1,025.23 was due as of May 1, 2016 (the "Notice").

Based on the testimony of C.A., I find that the Tenant was served with the Notice on May 4, 2016 by posting to the rental unit. 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 May 7, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 12, 2016. 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.

C.A. testified that the Tenant paid \$996.34 on June 1, 2016. C.A. confirmed that she gave the Tenant a receipt for use and occupancy only.

Pursuant to clause 6 the Tenant agreed to pay a late fee in the amount of \$20.00. On the Application for Dispute Resolution the Landlord indicate they sought the sum of \$25.00 for the late fee.

May 2016 rent	\$1,025.23
May late fee	\$20.00
June 2016 rent	\$1,025.23
June late fee	\$20.00
Filing fee	\$100.00
TOTAL	\$2,190.46
<i>Less amount paid on June 1, 2016</i>	<i>\$996.34</i>
TOTAL CLAIMED AT HEARING	\$1,194.12

The Landlord confirmed they wished to retain the Tenant's security deposit in the amount of \$390.00 such that they sought a monetary order in the amount of \$804.12.

### 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 did not apply to dispute the Notice and 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 accept the undisputed evidence of the Landlord's agents as to the amounts outstanding for rent and late fees and find that the Landlord has established a total monetary claim of \$1,194.12 as claimed.

I order that the Landlord retain the security deposit of \$390.00 in partial satisfaction of the claim and I grant the Landlord a Monetary Order under section 67 for the balance due in the amount of **\$804.12**. 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 file 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

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: June 28, 2016

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Residential Tenancy Branch