



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing, and amended application, by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. The Landlord confirmed that the Landlord is actually a 3<sup>rd</sup> party unnamed in the application and the person named as Landlord in the application is the property manager.

### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on September 1, 2014. Rent of \$595.00 is payable on the first day of each month. On May 26, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The

Notice sets out that \$760.44 is owed as of December 1, 2016. This amount included unpaid rent for December 2015. After receiving the Notice the Tenant brought evidence to the Landlord that all rent was paid for December 2015. The Landlord confirms that the Notice was recognized by the Landlord as containing an error in the amount of rent unpaid. The Landlord states alternatively that the remaining amount on the Notice came from a portion of unpaid rent from March 2016 or that it came from unpaid arrears of \$217.50 from September 2015. The Tenant has paid full rent since receiving this Notice. The Landlord states that the Tenant was informed that the Landlord would continue to seek an end to the tenancy by the Landlord having served the Tenant with the amended application that sets out a monetary amount claimed of \$190.44.

### Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. If a landlord accepts rent after the effective date of the notice to end tenancy, the intent of the parties will determine whether the tenancy has been reinstated. The Landlord provided no evidence of having issued a receipt for use and occupancy for rents taken after the effective date of the Notice. The Landlord provided conflicting evidence on amount of rent owed and when it became owing after deducting the amount included for December 2015 rent. As a result I cannot with any confidence accept that any monies were left owing after the Landlord's accounting error was corrected in relation to the December 2015 rent and on the Notice. For these reasons I find that no rents are owed or were owed when the Notice was issued, that the Landlord's Notice is not valid and that the tenancy has been reinstated.

The Landlord's application is dismissed.

### Conclusion

The 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: July 11, 2016

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Residential Tenancy Branch