



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MND, 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 / utilities - Section 67;
3. A Monetary Order for Damages – Section 67
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (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 provided testimony that this tenancy was the subject of a hearing on June 22, 2016 in respect of the *tenant's* application, which was also not attended by the tenant and in which the landlord made an appearance. As a result the landlord was given an Order of Possession. I am guided by the landlord's testimony the Decision of June 22, 2016 is the subject of a pending Application for Review.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began December 2015. The parties signed a *new* tenancy agreement

effective March 15, 2016. The landlord testified the purpose of the new agreement was to clarify that the tenant was responsible for utilities including, what the landlord stated as "flat rate", also payable on the date for the rent. The landlord explained "flat rate" to be the annual

City Utilities Bill for water, garbage, sewer and recycling: which the landlord provided a copy dated February 18, 2016 in the amount of \$998.94 or \$1048.89 dependent on the payment date. The landlord claims the tenant is responsible monthly for a pro-rated amount of \$83.25, despite this amount not being articulated in the agreement. Rent in the amount of \$1700.00 is payable in advance on the fifteenth (15) day of each month. The landlord is not in possession of a security deposit. The landlord claims the tenant failed to pay all rent for April 2016 and did not pay rent in the month of May 2016 and on May 16, 2016 the landlord served the tenant with a notice to end tenancy for non-payment of rent stating the tenant owed rent of \$2400.00 and utilities for 4 months of \$333.00. The landlord testified the tenant ultimately paid the outstanding rent after the Notice to End effective date of May 26, 2016 and after making this application June 02, 2016. The tenant has lately paid the majority of rent for June(15) 2016 in 2 payments, except for \$200.00: the latter claimed to be in the last week. The landlord claims the tenant has also not paid the agreed "flat rate" utilities since January 15, 2016 rent due date.

The landlord testified they are currently negotiating with the tenant in respect to the tenancy.

The landlord claims the tenant has damaged the garage door and has not yet repaired it. The landlord seeks \$850.00 to repair it. The landlord testified the amount is their estimate and what they claim the tenant is purportedly agreeing to pay, therefore the landlord claims this amount.

### **Analysis**

Based on the landlord's undisputed evidence I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The landlord testified the tenant did not pay the rent within the prescribed time to do so and filed for dispute resolution: which matter is under review. The landlord claims the tenant ultimately paid the arrears of \$2400.00 after the effective date of the Notice to End although I do not have benefit of evidence the landlord accepted it for *use and occupancy only* or somehow clearly communicated with the tenant the money would be only for *use and occupancy*, thus still pursuing an end to the tenancy. In the absence of

evidence confirming the intent of the parties in this latter respect I find the landlord effectively *re-instated the tenancy*.

However, what is clear before me is that the tenant still owes rent for June 2016 in the amount of **\$200.00**. The landlord is owed all of monthly rent therefore I grant the landlord this amount. July 2016 rent is not yet due.

I accept the landlord's evidence the tenant agreed to pay the annual City Utilities Bill or Flat Rate Utility Bill, or the "flat rate" payable by tenant expressed in the tenancy agreement. I have no evidence before me as to the tenant's responsibility to pay this utilities bill on a pro-rated basis monthly, or as to the amount payable, or when it would be due. I find this term of the agreement respecting the payment of the "flat rate" is unclear. I find insufficient evidence upon

which to base enforcement of the term, although I accept the tenant ultimately owes the City Flat Rate Utility Bill. As a result, I **dismiss** this portion of the claim, *with leave to reapply*.

I find that if the tenant has damaged the garage door the Act is clear they are responsible for its repair or replacement. If the tenant refuses to do so the landlord may apply for the cost of the repair. In this application the landlord has not provided sufficient evidence supporting their claim the repair to the damage is in the claimed amount. As a result, I must **dismiss** this portion of the claim, *with leave to reapply*.

I find that the landlord has established a monetary claim for unpaid rent of \$200.00. As the landlord has been partially successful in their application I grant the landlord recovery of half their filing fee in the amount of \$50.00 for a total award of \$250.00.

### **Conclusion**

I grant the landlord an Order under Section 67 of the Act for the amount of **\$250.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claims is dismissed with leave to reapply.

The tenancy continues pursuant to the terms of the tenancy agreement.

**This Decision is final and binding on both parties.**

*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 14, 2016

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Residential Tenancy Branch