



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

The landlord applies for an order of possession pursuant to a one month Notice to End Tenancy dated May 28, 2016. By amendment to his claim he also seeks an order of possession pursuant to a ten day Notice to End Tenancy dated June 18, 2016 and a monetary award for unpaid rent.

The tenant disputes service of the ten day Notice and says that some of the claimed rent was paid.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the tenancy ended by operation of either Notice? What if anything is the landlord owed for rent?

### Background and Evidence

The rental unit is a one bedroom basement suite below the landlord's residence.

The tenancy started in December 2014. The monthly rent is \$650.00 due on the first of each month. The landlord holds a \$325.00 security deposit.

There is no dispute but that the tenant was served with the one month Notice. She testifies that she was served on June 1; the landlord says it was May 28. The tenant has not made an application to dispute the Notice.

The tenant says the ten day Notice was given to a visitor at the premises and was not properly served on her. The landlord says his wife served the tenant. The landlord's wife did not give evidence.

The tenant says she did not pay March rent because the rent money was stolen from her suite. She says she paid April, May and June rents to the landlord but was denied a receipt though she asked for one. She hasn't paid anything for July as she is awaiting the outcome of this hearing.

The tenant's roommate Mr. W. testifies that he gives his portion of the rent in cash to the tenant, who then pays it to the landlord. He confirms that the March rent money was stolen. He confirms that the tenant always asks for receipts but never gets them.

Both the tenant and Mr. W. allude to the landlord entering the premises without permission and requesting sexual favours in lieu of rent.

In response the landlord denies any sexual barter conduct. He says he'd never heard of the claim of stolen rent until this hearing.

### Analysis

The tenant has not disputed the one month Notice to End Tenancy. As a result, by operation of s. 47 of the *Residential Tenancy Act* (the "RTA") she is "conclusively deemed" to have accepted the end of the tenancy. The landlord has failed to prove that the Notice was served in May. I find that it was served June 1, 2016 and as a result this tenancy will end July 31, 2016.

In the face of the tenant's evidence about service of the ten day Notice, the landlord has failed to establish that the ten day Notice was served in accordance with s. 88 of the *RTA*. That Notice is of no effect and has not ended the tenancy earlier than July 31, 2016.

Regarding rent, the tenant has put herself in a very difficult position by not having a receipt or other convincing corroboration of payment of rent by cash. The initial burden of proof of payment of a debt is on the debtor; the tenant in this relationship.

The *RTA*, s. 26(2), makes specific provision that a landlord must provide a tenant with a receipt for rent paid in cash. A tenant who foregoes receiving a receipt when she pays rent in cash runs a significant risk that she will be unable to prove payment later.

In the circumstances of this case I cannot find that it is more likely than not that the tenant paid the cash rent she claims that she did. I find the rent was unpaid.

The evidence about bartering rent for sexual favours, if established by the evidence might well affect assessment of the landlord's credibility. The conduct has not been proved on a balance of probabilities and so I determine it has not effect.

I find that the landlord is owed the rent for March, April, May, June and July 2016; a total of \$3250.00, plus recovery of the \$100.00 filing fee for a total of \$3350.00. The landlord will have a monetary order against the tenant for the total of \$3350.00.

The landlord has not request authorization to retain the \$325.00 security deposit he holds. He is free to apply that deposit money in reduction of the amount awarded.

### Conclusion

The landlord's application is allowed. An order of possession for July 31, 2016 will issue. The landlord will have a monetary order in the amount of \$3350.00.

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 22, 2016

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Residential Tenancy Branch