



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenant, with a witness, on June 23, 2016.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

### Background and Evidence

The landlord testified that this month to month tenancy started on May 05, 2016. Rent for this unit is \$ 1,100.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$600.00 on April 29, 2016.

The landlord testified that the tenant paid the security deposit prior to the tenancy commencing but failed to rent for May on the day it was due. The tenant did pay \$500.00 on May 26, 2016 in cash. The tenant failed to make any further payments towards the rent for June, July and August, 2016 leaving an unpaid balance of \$3,900.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on June 06, 2016. This was served in person to the tenant. The landlord has provided a proof of service document signed by a witness attesting that this service took place. The Notice informed the tenant that they had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 16, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice.

The landlord has applied to retain the tenant's security deposit of \$600.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that there is outstanding rent for May, June, July and August of \$3,900.00. However, as the landlord still has opportunity to re-rent the unit for part of August I will limit his claim to half a month's rent for August of \$550.00, plus the rent due for May of \$600.00 and the rent due for June and July of \$2,200.00. If the landlord makes every attempt to re-rent the unit for August 15, 2016

and is unable to do so the landlord is at liberty to file a new application to recover a loss of rent for the remainder of August, 2016. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$3,350.00**.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$600.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,350.00
Filing fee	\$100.00
Less security deposit	(-\$600.00)
<b>Total amount due to the landlord</b>	<b>\$2,850.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,850.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: August 03, 2016

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Residential Tenancy Branch