



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent, an early end to tenancy pursuant to section 56(1), 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 and the Landlord's agent, S.B., appeared at the hearing. S.B. gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

S.B. testified that he served the Tenant with the Notice of Hearing and their Application on July 13, 2016 by registered mail. Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of July 18, 2016 and I proceeded in her absence.

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

Introduced in evidence was a copy of the residential tenancy agreement. S.B. also testified as to the terms of the tenancy as follows.

The tenancy began February 1, 2016. Monthly rent was payable in the amount of \$650.00 payable on the first of the month. A security deposit in the amount of \$325.00 was paid on February 1, 2016.

The Tenant failed to pay the full amount of rent for the month of May 2016 leaving \$325.00 owing and also failed to pay rent for the month of June 2016. The Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on June 1, 2016 indicating the amount of \$975.00 was due as of June 1, 2016 (the "Notice").

Based on the testimony of S.B., I find that the Tenant was personally served with the Notice on June 1, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days of service, namely, June 6, 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.

S.B. testified that approximately three days after they received the Notice, the Tenant paid \$400.00 towards the outstanding amount such that \$575.00 remained owing.

During the hearing S.B. confirmed that the Tenant also failed to pay rent for July or August 2016 such that at the time of the hearing the amount of \$1,875.00 was outstanding.

The Landlord sought to retain the \$325.00 security deposit as well as recovery of the \$100.00 filing fee.

### 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 Landlords are 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 Landlords are 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 find it unnecessary to consider whether the Landlord is entitled to an early end to tenancy pursuant to section 56(1) having satisfied me that the tenancy should end pursuant to the undisputed 10 Day Notice.

I find that the Landlords have also established a total monetary claim of \$1,975.00 comprised of \$1,875.00 owing in unpaid rent and the \$100.00 fee paid by the Landlords for this application.

I order that the Landlords retain the security deposit of \$325.00 in partial satisfaction of their claim and I grant the Landlords a Monetary Order under section 67 for the balance due of **\$1,650.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

### Conclusion

The Landlords are 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: August 03, 2016

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Residential Tenancy Branch