



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OPR, MNR, FF

### Introduction

On July 4, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; a monetary order for unpaid rent; and to recover the cost of the filing fee. The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing and provided affirmed testimony. The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Tenant testified that she served the Landlord with evidence in response to the claim on July 27, 2016 by hand. The Landlord testified that he received the Tenant's evidence on July 29, 2016. The Landlord testified that he had an opportunity to consider the Tenant's evidence prior to the hearing and he does not oppose admitting the Tenant's evidence.

Rule 3.15 of the Residential Tenancy Branch (RTB) Rules of Procedure states that a respondent's evidence must be received by the RTB and the applicant not less than 7 days prior to the hearing.

Based on the Landlord's agreement to accept the evidence, the Tenant's 21 pages of evidence is admitted into evidence for this hearing.

### Issues 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 entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that he purchased the rental home and took possession on April 1, 2016. The Landlord testified that the Tenant was already living in the rental unit when he took possession of the house. The Landlord did not know when the tenancy started for the Tenant.

The Tenant testified that the tenancy began in April 2015, as a fixed term tenancy for one year that continued thereafter as a month to month tenancy. Both parties agree that rent in the amount of \$1,000.00 is payable on the first of each month. The Tenant Testified that she paid the original Landlord a security deposit in the amount of \$500.00.

The Landlord testified that he served the Tenant with a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 27, 2016, by handing it directly to the Tenant on April 27, 2016. The Landlord testified that his mother will be moving into the unit.

The Landlord testified that he served another 2 Month Notice To End Tenancy For Landlord's Use Of Property on the Tenant on May 16, 2016, in the presence of Police because he wanted a witness to prove service of the Notice.

The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 27, 2016, ("the 2 Month Notice") provides information for Tenants who receive the Notice. The 2 Month Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

The Tenant did not dispute the Notice. The Tenant testified that she did not dispute the Notice because she has accepted the Notice and is in the process of moving out of the rental unit.

The Landlord testified that the Tenant did not pay him rent for the months of April 2016, and May 2016.

The Landlord testified that he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 24, 2016 ("the 10 Day Notice"). The 10 Day Notice indicates that the Tenant owes \$1,000.00 for April 2016, rent and \$1,000.00 for May 2016, rent. The 10 Day Notice has an effective date of June 3, 2016.

The Landlord testified that the 10 Day Notice was served by personally to the Tenant on May 24, 2016. The Landlord had a witness at the hearing to testify about service of the 10 Day Notice. The witness, K.D. testified that the Landlord served the Tenant with the Notice by handing it to the Tenant on May 24, 2016. The witness testified that the

Tenant said the Notice did not apply because she had already received a Notice to end tenancy from the Landlord.

The 10 Day Notice states that the Tenant has five (5) days to pay the rent or file an Application for dispute resolution with the RTB.

The Tenant testified that she received the 10 Day Notice on May 24, 2016. She testified that she paid the rent for May 2016, after receiving the Notice.

The Tenant did not dispute the 10 Day Notice. The Tenant testified that she had already paid the rent for April 2016, by leaving \$1,000.00 in cash in the laundry area located within in the Landlord's unit. The Tenant testified that this is how she always paid her rent. She testified that the upper unit was always vacant and she had a key to enter it and leave the rent. She testified that the previous Landlord never issued her receipts for rent.

The Landlord testified that the Tenant did pay \$1,000.00 for May 2016, rent after they served her with the 10 Day Notice but they never received the rent owing for April 2016. The Landlord testified that the previous owner of the house told him that the Tenant had not paid the rent for April 2016.

The Landlord testified that the Tenant has also not paid rent for June 2016, July 2016, and August 2016.

The Tenant testified that she agrees that she did not pay the Landlord rent for the Months of June 2016, July 2016, and August 2016. She testified that she did not pay the Landlord because the Landlord had thrown her possessions out of the rental unit.

Section 26 of the *Act* states that 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.

Section 46 (5) of the *Act* states that if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within 5 days of receiving the Notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Section 51 of the *Act* states that a Tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the Landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

### Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not dispute the 10 Day Notice and did not pay rent to the Landlord for the month April 2016.

According to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ends on the June 3, 2016, the effective date of the 10 Day Notice. I find that the tenancy has ended. I find that the Landlord is entitled to an order of possession effective after 2 (two) days service on the Tenant.

I also find that the Tenant owes the Landlord rent for the months of April 2016, June 2016, July 2016, and August 2016. I find that the Tenant did not have a right under the *Act* to withhold paying the rent. I do not accept the Tenants testimony that she left the April 2016, rent payment in the laundry room of the Landlord's unit. The Tenant did not provide any documentary evidence to support her testimony on this. I prefer the testimony of the Landlord that the rent for April 2016 was not paid.

I find that the Tenant owes the Landlord \$4,000.00 for unpaid rent. However, section 51 of the *Act* entitles the Tenant to an amount equivalent to one month of rent.

Although the Landlord did not apply to keep the Tenant's security deposit of \$500.00, the Tenant requested that the Landlord be permitted to keep the security deposit in partial satisfaction of the claim. The Landlord agreed to subtract the Tenant's security deposit amount from the amount the Tenant owes for rent, even though the Landlord's neglected to recover the \$500.00 security deposit from the original Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After deducting the Tenants compensation of \$1,000.00 and the security deposit of \$500.00 from the \$4,000.00 that the Tenant owes the Landlord for unpaid rent, I find the Tenant owes the Landlord the amount of \$2,500.00.

I find that the Landlord has established a total monetary claim of \$2,600.00 comprised of \$2,500.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$2,600.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

## Conclusion

The Tenant did not dispute the 10 Day Notice and failed to pay the rent.

The Landlord is granted an order of possession effective after 2 (two) days service on the Tenant. The Landlord is also granted a monetary order in the amount of \$2,600.00.

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: August 04, 2016

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Residential Tenancy Branch