



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on July 9, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 9, 2016, the day it was served.

### Preliminary Issue – Amendment of Landlords' Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include August 2016 unpaid rent of \$1,000.00 total. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for August unpaid rent of \$1,000.00 total.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

As per the testimony of the landlord, the tenancy began on September 1, 2013 on a month-to-month basis. Rent in the amount of \$1,000.00 is payable each month. The tenant remitted a security deposit in the amount of \$400.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued to the tenant on June 17, 2016 by way of posting to the rental unit door where the tenant resides. The notice indicates rent in the amount of \$1,600.00 was due on June 1, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on June 20, 2016, three days after its posting.

The landlord seeks a monetary order of \$820.00 for rent arrears accruing from April 2016 to August 2016. The landlord listed the individual payments the tenant has made since April 2016 and testified that he has provided a receipt for each payment indicating use and occupancy only. As per the landlords testimony the tenant has paid \$2,840.00 for the above five months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

### Analysis

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I find the tenant was not served with an effective notice as the notice before me does not state an effective date and does not indicate the landlord name under the signature block. Due to the ineffective notice, I find the landlord is not entitled to an order of possession and the tenancy continues until it is ended in accordance with the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that

a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,000.00. However I find that the landlord provided conflicting testimony in regards to how much rent was paid and how much rent remains outstanding. Based on the landlord's testimony of what rent was paid in five months, \$2,160.00 should remain outstanding. Yet the landlord seeks only \$820.00. I find the landlord has provided insufficient evidence to prove what the tenant failed to pay in rent from April to August 2016. Therefore I dismiss the landlord's application for a monetary order with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The landlord's application for an order of possession in regards to the 10 Day Notice dated June 17, 2016 is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

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 23, 2016

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Residential Tenancy Branch