



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 43 HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on June 20, 2016. The Landlord filed seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee.

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following, in part, in the attachment to the details of the dispute:

August 2016	\$536.00 Balance Rent Owed \$2513
September 2016	\$536.00 Balance Rent Owed \$3049

*We have included a total to include anticipated losses as we expect not to receive any rent.*

[Reproduced as written]

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

The hearing was conducted via teleconference and was attended by two agents for the Landlord. Only one agent, L.D. presented evidence during this hearing. No one was in attendance on behalf of the Tenant.

The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on July 21, 2016. Canada Post tracking information was submitted into evidence.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing. I concur with this policy and find it is relevant to the matters before me.

Based on the undisputed evidence of the Landlord I find the Tenant was deemed served notice of this application and hearing on July 26, 2016, five days after it was mailed, pursuant to section 90 of the *Act*.

#### Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

The Landlord submitted documentary evidence that the Tenant entered into a written tenancy agreement which began on February 1, 2015. The monthly rent is based on an annual subsidy and the Tenant’s rent was \$536.00 payable on the first of each month. On January 22, 2015 the Tenant paid \$400.00 as the security deposit.

In May 2014 the Tenant began to fall behind on his rent payments. On March 23, 2016 the Landlord and Tenant entered into a repayment agreement whereby the Tenant was required to pay \$15.00 each month towards the outstanding accrued balance owed in addition to his regular \$536.00 rent payment. The written agreement stated in part, as follows:

*Failure to adhere to this repayment plan will be considered a breach of your tenancy agreement and may result in an immediate eviction notice.*

The Landlord testified the Tenant failed to comply with the repayment agreement and did not pay his rent that was due on June 1, 2016. On June 8, 2016 they served the Tenant a 10 Day Notice to end tenancy via registered mail. That notice indicated \$1,992.00 rent was due on the first of June 2016.

The Landlord testified two payments have been received as follows: \$551.00 received on July 6, 2016 and \$551.00 received on August 1, 2016. No payments have been received in September and the Tenant still resides in the rental unit.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their documentary evidence.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on June 13, 2016, five days after it was mailed. Therefore, the effective date of the Notice would be **June 23, 2016**.

The Tenant neither paid the rent in full nor disputed the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **June 23, 2016**. Accordingly, I grant the Landlord's request and issue them an Order of Possession effective 2 Days upon service to the Tenant. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 26 of the *Act* stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenant had accumulated an amount owed to the Landlord for rent since May 2015. The Landlord attempted to work with the Tenant by offering him a repayment plan of \$15.00 per month, which I find to be reasonable given the circumstances presented to me during the hearing. The Tenant entered into a written agreement acknowledging that if he failed to comply with the repayment agreement it would be cause to end his tenancy.

Section 67 of the Residential Tenancy Act states without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the totality of the undisputed evidence before me, I find the Tenant failed to pay his rent up to and including June 1, 2016 in the amount of \$1,992.00, in breach of section 26 of the *Act*.

Since filing their application on June 20, 2016 the Landlord received two payments of \$551.00 (July 6, 2106 and August 1, 2016). These payments were made after the effective date of the 10 Day Notice and did not pay the amount owed in full. Therefore, based on the Generally Accepted Accounting Principles (GAAP) these payments would be applied to the previous amount owed. As per the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent in the amount of **\$890.00** (\$1992.00 - \$551.00 - \$551.00), pursuant to section 67 of the *Act*.

As noted above, this tenancy ended **June 23, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the rental unit, not rent, for July, August, and September 2016, of \$1,608.00 (3 x 536.00).

The Tenant continues to occupy the rental unit and the Landlord will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the period of July 1, 2016 to September 30, 2016 in the amount of **\$1,608.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee.

**Monetary Order** – This application meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$400.00 deposit since January 22, 2015.

Unpaid Rent to June 2016	\$ 890.00
Use and Occupancy	1,608.00
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	<b>\$2,598.00</b>
<b>LESS:</b> Security Deposit \$400.00 + Interest 0.00	<u>- 400.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$2,198.00</u></b>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$2,198.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$2,198.00** which may be enforced through Small Claims Court upon service to the Tenant.

### Conclusion

The Landlord was successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$2,198.00**.

This decision is final, legally binding, 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: September 12, 2016

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Residential Tenancy Branch