



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes                      OPR, MNR, MNSD, FF

### Introduction

This review hearing was ordered on July 29, 2016 pursuant to an Application for Review Hearing filed by the tenant on July 25, 2016 in response to hearing held and a decision issued on July 19, 2016. The hearing of July 19, 2016 dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and request to retain the security deposit. At the review hearing both parties appeared. The purpose of today's review hearing was explained to both parties and the parties were provided the opportunity to make relevant submissions.

As provided in the Review Consideration Decision the tenant was required to serve the landlord with a copy of the Review Consideration Decision, the Notice of Hearing, and the evidence he submitted with his Application for Review Consideration. The landlord confirmed receipt of the Review Consideration Decision and Notice of Hearing by registered mail but denied receiving the tenant's evidence.

The tenant acknowledged that his representative had assembled and mailed the documents to the landlord. This other person was not at the hearing and the tenant stated that she was unable to appear at the hearing to testify. Since the tenant has the burden to prove that he met his obligations to serve the landlord with all of the required documents, I found there to be insufficient proof that the tenant's evidence was sent to the landlord as ordered and I advised the parties that I would not give further consideration to the tenant's documentary evidence. Rather, I informed the parties that I would consider the parties' oral testimony with respect to rent payments and other relevant matters.

### Issue(s) to be Decided

Should the decision and orders issued on July 19, 2016 be upheld, varied or set aside?

### Background and Evidence

The landlord testified that the tenancy started in September 2011 and the tenant paid a \$200.00 security deposit. The tenant was required to pay rent of \$425.00 on the first day of every month.

As to the rent the landlord alleged the tenant failed to pay in her Application for Dispute Resolution the landlord provided a copy of the first page of a 10 Day Notice to End Tenancy for Unpaid Rent. A tenant's ledger, receipts or proof of service of the 10 Day Notice was not provided as evidence. During the review hearing, the landlord testified that she could not recall any specifics as to the months or amounts of rent the tenant failed to pay that were included in her Application and that she was not prepared to address such matters today. Rather, the landlord wished to focus on the basis for granting the tenant a review hearing, her desire to end the tenancy for reasons unrelated to rent, and the events that transpired since the hearing of July 19, 2016.

The landlord testified that in August 2016 she removed the tenant's belongings from the rental unit since she had received the Order of Possession dated July 19, 2016 and she had considered the tenant to have abandoned the rental unit despite receiving a written notice from the tenant that he had been posted and would be returning August 22 or 23. The landlord also acknowledged receiving a rent payment from the tenant in August 2016. The landlord stated that she had considered the payment to be for June and July 2016 rental arrears whereas the tenant considered the payment to be for August 2016 rent.

The landlord also stated multiple times that she wanted the tenant out of her life and out of the property as he was causing conflict with her and other tenants. The landlord stated that she moved his belongings to a mini storage facility and that she will return his possessions to him.

The tenant pointed out that the landlord did not obtain a Writ of Possession or get the court bailiff to remove his belongings from the rental unit. Also, the tenant had filed an Application for Review Consideration shortly after the July 19, 2016 decision was received by him.

The tenant also indicated that he had not abandoned the rental unit. He pointed out he was often posted with the military and would leave notes for the landlord to inform her of such, just as he did in June 2016. The tenant was also of the position that he had paid the rent that was due to the landlord including August 2016. The tenant confirmed that as of the date of this review hearing he did not wish to return to the rental unit and that he wants to retrieve his belongings from the landlord.

The parties discussed scheduling a date and time for the tenant to retrieve his possessions from the mini storage locker rented by the landlord. The landlord described the approximate location of the mini storage facility although she could not recall the name of the facility or the address. During the discussions the parties were agreeable to the following:

1. The tenant shall contact the landlord and inform the landlord of the date and time that he, or his agent, will retrieve his belongings from the mini storage. The date for retrieving his belongings will be no later than September 29, 2016

2. The landlord will inform the tenant of the name and location of the mini storage facility where his belongings are stored.
3. At the date and time scheduled by the tenant for retrieval of his possessions the landlord shall meet the tenant at the mini storage facility and provide full access to the mini storage locker so that he may retrieve his possessions.
4. Should the tenant fail to contact the landlord to schedule a date and time for retrieval of his possessions or not show up at the date and time scheduled, the landlord is at liberty to treat the tenant's possessions as abandoned as of that time and will follow the abandoned property rules provided in the Residential Tenancy Regulations.

### Analysis

A party that files an Application for Dispute Resolution generally has the burden to prove an entitlement to the remedies sought. On the date of this review hearing, the landlord could not recall any particulars as to the amount she had claimed for unpaid rent. Therefore, I find the landlord failed to establish an entitlement to unpaid rent or a Monetary Order for unpaid rent and I set aside the Monetary Order issued on July 19, 2016.

As the landlord was authorized to retain the tenant's security deposit on July 19, 2016 in partial satisfaction of unpaid rent, I further order that that authorization is set aside and that the security deposit remains in trust for the tenant to be administered in accordance with the Act. The parties were informed that the landlord will be required to take appropriate action with respect to returning the security deposit or making a claim against it within 15 days of receiving a forwarding address from the tenant in writing. The parties were also informed that the landlord's failure to administer the security deposit in accordance with the Act may entitle the tenant to make a claim for return of double the security deposit.

As for the Order of Possession issued on July 19, 2016, I set it aside. The landlord has taken possession of the rental unit already, even though she did not have a court order (a Writ of Possession), and the tenant has confirmed he does not wish the tenancy to continue at this time or regain possession of the rental unit. Further, the tenant had denied receiving the 10 Day Notice to End Tenancy for Unpaid Rent and the landlord had not provided any proof of service and her recollection of events was very scant during the review hearing. I also noted that the landlord had only provided a copy of the first page of a 10 Day Notice in her evidence despite the requirement to give the tenant both pages. Therefore, I find the landlord did not establish an entitlement to an Order of Possession but in any event it is a moot point at this time since the landlord has already taken possession, albeit illegally, and the tenant no longer wishes to occupy the rental unit.

Under section 62 of the Act, I have the authority to issue any order(s) necessary to give effect the rights and obligations of the Act. Having heard the landlord has taken the tenant's possessions and put them in a storage facility without a court order, **I order and make the**

**terms the parties agreed upon during the hearing, as described in the Background section of this decision, binding upon both parties.**

As for the tenant's assertions that he should be entitled to return of rent he allegedly paid for August 2016 that matter would have to be determined by way of a Tenant's Application for Dispute Resolution if he so chooses to pursue the matter.

#### Conclusion

The decision, Order of Possession and Monetary Order issued on July 19, 2016 are set aside and are of no force or effect. The authorization given to the landlord to retain the security deposit on July 19, 2016 is set aside with the effect that the security deposit remains in trust for the tenant to be administered in accordance with the Act.

I have ordered the parties to fulfill the terms agreed upon during the hearing with respect to return of the tenant's possessions.

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: September 21, 2016

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Residential Tenancy Branch