



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute codes      OPR MNR

### Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated July 28, 2016. In the original decision issued by way of a Direct Request Proceeding, the landlord was granted an order of possession and a monetary order in the amount of \$200.00. The original decision and orders were subsequently suspended by way of a review consideration decision dated August 16, 2016 pending the outcome of this review hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

### Issues

Should the original decision and order dated July 28, 2016 be confirmed, varied or set aside in relation to each of the following:

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

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

### Background and Evidence

The tenancy began on December 1, 2015 with a monthly rent of \$750.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$375.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on July 7, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent by posting a copy to the door of the rental premises. The tenant acknowledged receipt of the Notice. The Notice indicates that the tenant failed to pay rent in the amount of \$200.00 that was due on July 1, 2016.

The landlord submitted a table of rental arrears. The landlord submits that the tenants rent is normally paid directly through assistance from a government Ministry. However in the month of March 2016 the landlord did not receive a Ministry cheque and instead the landlord received a cheque from the tenant in the amount of \$350.00 leaving an outstanding balance of \$400.00 plus a \$25.00 late fee charge for a total outstanding balance of \$425.00. In April and May 2016 the tenant made extra payments totaling \$275.00 but also incurred additional late fees of \$50.00 for late payments in these two months. The tenancy agreement contains a provision providing for a \$25.00 fee for late payments of rent. As of July 1, 2016 the outstanding balance was \$200.00. The landlord contends that any payments are first applied to the rent arrears including late payment fees, so this outstanding balance as of July 1, 2016 was solely rent.

The landlord confirmed that the tenant has since made an additional payment of \$100.00 with October's rent leaving an outstanding balance of \$100.00.

The tenant acknowledges there is a \$100.00 balance outstanding and contends that it will be paid on October 19, 2016. The tenant submits that the amount outstanding as per the 10 Day Notice was for arrears and not for July rent as claimed by the landlord. The tenant submits that the landlord indicates in the direct Request Worksheet that only \$550.00 was paid for the month of July 2016 when in fact the tenant paid the full amount of \$750.00 for this month on June 27, 2016.

### Analysis

The tenant acknowledged being served with the 10 day Notice to End Tenancy on July 7, 2016.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, July 17, 2016.

The tenant acknowledged that there were arrears of \$200.00 outstanding when the Notice was issued. Whether this amount was for rent arrears or for July rent is not relevant. The landlord issued a Notice requiring payment of the arrears amount. The tenant did not pay the arrears or file an application to dispute the Notice as required by section 46 of the Act. Although late fees are not included in the definition of rent, it is evident and the tenant acknowledged that there were arrears rent outstanding. Even if the extra payments made by the tenant were applied to arrears rent, and not late fees,

this would still leave a balance of \$125.00 in outstanding rent at the time the Notice was issued, as the tenant was only charged a total of \$75.00 in late fees. In either event, if it was not clear to the tenant whether the amount in the Notice was for arrears rent versus late fees, the tenant could have filed an application to dispute the Notice.

Therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and the landlord is entitled to an Order of Possession.

The Order of possession issued on July 28, 2016 is confirmed.

The parties agree that there is a balance of \$100.00 outstanding as of the hearing date.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$100.00 and the original decision and monetary order is varied to reflect this updated amount.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 13, 2016

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Residential Tenancy Branch