



# 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 tenants pursuant to section 72.

Tenant RB (the "tenant") and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord named in this application, and had authority to speak on his behalf.

The tenant confirmed receipt of the landlord's application and evidence for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application and evidence.

### 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 September and October 2016 unpaid rent in the amount of \$1,860.00 each. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this 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 September and October unpaid rent in the total amount of \$3,720.00.

### 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 tenant?

### Background and Evidence

As per the testimony of the parties, the tenancy began on May 1, 2016 on a month to month basis. Rent in the amount of \$1,860.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$930.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant confirms personal receipt of the 10 Day Notice on August 10, 2016. The notice indicates an effective move-out-date of August 20, 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 August 20, 2016, the day it was personally served.

The landlord seeks a monetary order of \$6,000.00 for unpaid rent from July 2016 to October 2016. The landlord claimed that the tenant paid a total of \$1,440.00 in rent for the above four months.

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

The tenant confirmed he owes rent in the amounts stated by the landlord.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice within five days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of 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*, *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 \$1,860.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from July 2016 to October 2016. Therefore, I find that the landlord is entitled to \$6,000.00 in rent.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$930.00 in partial satisfaction of the monetary award and I grant an order for the balance due of \$5,070.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$5,170.00.

#### Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$5,170.00.

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: October 28, 2016

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Residential Tenancy Branch