



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR

### Introduction

On October 20, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession and a monetary order for unpaid rent or utilities. The matter was scheduled as a teleconference hearing.

The Landlord's agent ("the Landlord") and the Tenants attended the teleconference hearing. Both parties confirmed that they have received disclosure of the evidence before me. The Landlord and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant E.H. testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the 10 Day Notice") from the Landlord on October 14, 2016. She testified that she only received page 1 of the 2 page 10 Day Notice. She testified that she was fully aware of her right to dispute the 10 Day Notice, and testified that she had disputed the 10 Day Notice on October 19, 2016. The Tenant E.H. testified that she wanted to dispute the 10 Day Notice because of a number of concerns the Tenants' have with the Landlord, including who the Tenants are supposed to pay the rent to.

The Landlord provided both pages (page 1 and page 2) of the 10 Day Notice that was served on the Tenants.

The Residential Tenancy Case Management System indicates that the Tenants applied for dispute resolution; however, on October 27, 2016, the Tenants decided to cancel their Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Whether or not the Tenants received both pages of the 10 Day Notice from the Landlord is in dispute. Based on the testimony of E.H., that the Tenants understood their rights with respect to the 10 Day Notice, and her testimony that she disputed the 10 Day Notice, I find that the Tenants knew the information contained on page 2 of the 10 Day Notice that they allege was

not provided. In the circumstances, I find that even if the Landlord served only page 1 of the 10 Day Notice, it is reasonable for me to amend the Notice to End Tenancy, to be an effective 10 Day Notice to End Tenancy. I find that the Landlord completed page 1 of the 10 Day Notice and it meets with the form and content requirements of section 52 of the Act. Pursuant to section 68 of the Act, I find that the 10 Day Notice is an effective notice.

#### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?

#### Background and Evidence

The Landlord and Tenants testified that the tenancy began on October 1, 2016, as a fixed term tenancy for 8 months to continue thereafter as a month to month tenancy. Rent in the amount of \$2,100.00 is payable on the first of each month. The Tenants are required to pay the Landlord a security deposit of \$1,050.00. The Landlord provided a copy of the tenancy agreement. The tenancy agreement identifies the Landlords as G.L. and S.L.

The Landlord testified that the rent cheque and security deposit cheque received from the Tenants for October 2016, were returned as dishonored. The Landlord provided documentary evidence of copies of the cheques that were returned by the Bank. The cheques were made out to be payable to the Landlord S.L. The cheques indicate that payment was stopped.

The Landlord testified that the Tenants showed no interest to pay the rent or move out so they were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2016. The 10 Day Notice states that the Tenants have failed to pay rent in the amount of \$2,100.00, and have failed to pay a security deposit in the amount of \$1,050.00 that was due on October 1, 2016.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that a Tenant has five days to pay the rent and utilities or file an application with the Residential Tenancy Branch.

The Landlord testified that the Tenants have not made any payments for rent or security deposit since the 10 Day Notice was issued.

The Landlord is seeking a monetary order in the amount of \$2,100.00 for October 2016 rent. The Landlord requested to amend the claim to include \$2,100.00 for November 2016 rent. The Landlord testified that the Tenants have not paid rent for November 2016.

In response, the Tenant E.H. testified that she wants to pay her rent but she does not know who to pay it to. She testified that she did not pay any rent within 5 days of receiving the 10 Day Notice and that the Tenants have not paid rent for October 2016, and November 2016. She testified that she was concerned that the rent cheques would be cashed by someone other than the Landlord so the cheques were cancelled.

The Tenant E.H. submitted that the address for the Landlord on the tenancy agreement is incorrect as it shows the Tenants address. She testified that she did not have an address to contact the Landlord.

In response, the Landlord testified that the Tenants were informed that the Landlord lives next door to the rental unit. The Landlord testified that the tenancy agreement contains the correct phone numbers of the Landlord.

The Landlord also submitted that the tenancy agreement identifies the Landlord as G.L. and S.L. The Landlord submitted that the Tenants cheques were made payable to S.L. The Landlord submits that there was no risk that the rent payment was being made to an incorrect person.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 14, 2016, identifies the Landlord as G.L. and provides two phone numbers for the Landlord. The 10 Day Notice also provides an address for the Landlord which is different from the address of the rental unit. The tenancy agreement between the parties identifies G.L. as one of the Landlords and provides the same phone numbers for the Landlord that were provided in the 10 Day Notice. I find that the Tenants knew the names, address, and phone numbers of the Landlord.

The cheques issued to the Landlords were made out to S.L. who is identified in the tenancy agreement as one of the Landlords. I find that there was no risk that the cheques were made payable to the wrong person.

I find that the Tenants had information available to them to contact the Landlords to address their concerns. I find that the Tenants failed to pay the rent that was due within 5 days of receiving the 10 Day Notice and did not follow through to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants have not paid the rent for October 2016, and November 2016. I grant the Landlords request to amend the Application to include loss of rent for November 2016. The

Tenants know that they are responsible to pay the rent when it is due and the Landlord has suffered a loss of rent for November 2016.

I find that the Tenants owe the Landlords \$2,100.00 for October 2016 rent, and \$2,100.00 for November 2016 rent.

I grant the Landlord a monetary order in the amount of \$4,200.00 for unpaid rent. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession and a monetary order for the unpaid rent in the amount of \$4,200.00.

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: November 15, 2016

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Residential Tenancy Branch