



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SANDY CREEK HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, FF

### Introduction

On October 28, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord's agents ("the Landlord") and the Tenant attended the teleconference. The Landlord testified that the Tenant was served with the Notice of Hearing and evidence prior to the hearing. The Tenant testified that he received the Landlord's documentary evidence prior to the hearing.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### 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?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on September 15, 2015, as a month to month tenancy. Rent in the amount of \$625.00 is payable on the first of each month. The Tenant paid the Landlord a security deposit of \$312.50.

The Landlord testified that the Tenant did not pay the rent that was due on October 1, 2016.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 18, 2016, ("the Notice") on October 18, 2016.

The Notice states that the Tenant has failed to pay rent in the amount of \$625.00 which was due on October 1, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that he received the Notice on October 18, 2016. The Tenant did not file an Application to dispute the Notice.

The Landlord testified that the Tenant paid \$200.00 towards October 2016, rent within five days of receiving the Notice. The Landlord testified that the Tenant paid a further \$350.00 towards October 2016, rent after the five days had passed. The Landlord testified that the Tenant still owes \$75.00 for October 2016 rent.

The Landlord's Application indicates the Landlord is seeking a monetary order in the amount of \$1,612.50. During the hearing the Landlord testified that the Tenant owes the following amount for rent:

- October 2016, in the amount of \$75.00
- November 2016, in the amount of \$250.0
- December 2016, in the amount of \$625.00

The Landlord is seeking to keep the security deposit of \$312.50 in partial satisfaction of the claim for unpaid rent.

The Landlord is seeking to recover the cost of the filing fee from the Tenant.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$950.00.

The Tenant testified that he did not pay the amount of \$625.00 as indicated within the Notice, within 5 days of receiving the Notice.

The Landlord's Application includes that the tenancy is ending for "cause", however there is no 1 Month Notice To End Tenancy For Cause in the documentary evidence, and the Landlord did not provide any testimony on the issue.

The Tenant acknowledged that he owes the Landlord the amounts listed above for unpaid rent. The Tenant testified that he has the rent money for November 2016, in his pocket but has not paid it because the Landlord issued him a receipt that says "use and occupancy only".

### Analysis

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.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is 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 Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$950.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$312.50 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,050.00 comprised of \$950.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$312.50 towards the claim of \$1,050.00, I find that the Landlord is entitled to a monetary order in the amount of \$737.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

The Landlord's request to end the tenancy for "cause" is dismissed as there was no testimony provided regarding "cause" and the tenancy is ending due to unpaid rent.

### Conclusion

The Tenant failed to pay the rent within five days of receiving the Notice, and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the security deposit in the amount of \$312.50 in partial satisfaction of the claim for unpaid rent.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$737.50.

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: December 05, 2016

---

Residential Tenancy Branch