



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

On October 20, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession, and for a monetary order for unpaid rent or utilities.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not.

The Landlord provided affirmed testimony that he served the Tenant with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on November 9, 2016. A Canada Post tracking number was provided as evidence of service. I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Landlord provided affirmed testimony that he submitted documentary evidence prior to the hearing to support his claims.

The Residential Tenancy Branch case management system indicates that the Landlord did submit evidence in support of his application; however, there is no evidence in the file.

Residential Tenancy Branch Rules of Procedure 3.18 gives an Arbitrator authority to adjourn a hearing to receive evidence if a party can show that evidence was submitted but was not received.

I find that the Landlord submitted evidence prior to the hearing and I grant a brief adjournment to allow the Landlord to re-submit his evidence. The Landlord testified that he would have the evidence faxed into the Residential Tenancy Branch by 3:00 pm on this date.

The Landlords evidence was received at 12:42 PM on this date.

During the hearing the Landlord testified that the Tenant moved out prior to the hearing and he does not require an order of possession. The Landlord is only seeking a monetary order for unpaid rent.

### Issue to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The Landlord testified that the tenancy began on December 1, 2015. Rent in the amount of \$800.00 was payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00.

The Landlord testified that the Tenant did not pay the rent when it was due under the tenancy agreement.

The Landlord testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 19, 2016 ("the Notice") on the Tenant on October 19, 2016.

The Notice indicates the Tenant owes \$800.00 for October 2016, rent. 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.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant did not pay any amount of money towards the rent since the Notice was issued.

The Landlord testified that he is not sure of the date the Tenant moved out, and that's why the Landlord initially included the request for an order of possession.

The Landlord testified that because of the Tenant's actions, the Landlord was not able to re-rent the unit for the month of November 2016, and the Landlord has suffered a loss of rent for November 2016. The Landlord requested to amend the Application to include November 2016, rent.

### Analysis

Based on the evidence before me, and the testimony of the Landlord, 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 Tenant failed to pay the rent that was owed to the Landlord when it was due, and I find the Tenant owes \$800.00 for October 2016, rent. I also find that the Tenant has not paid rent for the month of November 2016, and the Landlord has suffered a loss of rent for this month.

The Tenant breached the agreement by not giving notice to end the tenancy and by not paying the rent. The Landlord is entitled to compensation for any loss of rent up to the earliest time that the Tenant could have legally ended the tenancy. Therefore, pursuant to section 64 of the Act, I allow the claim to be amended to include the additional month of rent in the amount of \$800.00.

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 \$1,700.00 comprised of \$1,600.00 in unpaid rent for the above mentioned dates, and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$1,700.00. This 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.

### Conclusion

The Tenant failed to pay rent 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.

The Tenant failed to pay the rent that was owed under the tenancy agreement. The Landlord is granted a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,700.00.

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: December 22, 2016

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Residential Tenancy Branch

