



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### 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; and
- a monetary order for unpaid rent, pursuant to section 67.

The landlord's application was originally initiated as a direct request proceeding, which is a non-participatory hearing. In an interim decision issued on January 20, 2017, an adjudicator determined that the matter was not appropriate for a non-participatory hearing and ordered that a participatory hearing take place. The interim decision directed the landlord to serve the tenant with a copy of the interim decision and a Notice of Reconvened Hearing (the "Hearing Package").

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord's agent landlord MG (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she is an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on January 25, 2017 she forwarded the Hearing Package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Hearing Package on January 30, 2017, the fifth day after its registered mailing.

At the outset of the hearing the landlord testified that she was no longer seeking the cable portion of her monetary claim in the amount of \$900.00 therefore she seeks a reduced monetary claim of \$2,625.00 for unpaid rent only. In accordance with section 64(3)(c) of the *Act*, I amend the landlord's monetary claim from \$3,525.00 to \$2,625.00.

### Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent, pursuant to section 67.

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, this tenancy began on December 1, 2008 on a month-to-month basis. Rent in the amount of \$375.00 is payable on the first of each month. The tenant remitted \$300.00 for the security deposit at the start of the tenancy.

The landlord testified that a 10 Day Notice for Unpaid Rent ("10 Day Notice") was issued to the tenant on November 15, 2016 by way of posting to the rental unit door where the tenant resides. 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 November 18, 2016, three days after it was posted to the door. The notice indicates an effective move-out-date of March 31, 2016.

The landlord seeks a monetary order of \$2,625.00 for unpaid rent from May 2016 to November 2016. The landlord claimed that the tenant has not paid any rent for the above seven months.

### 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 \$375.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from May 2016 to November 2016. Therefore, I find that the landlord is entitled to \$2,625.00 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 \$300.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,325.00. 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 \$2,425.00.

#### 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 \$2,425.00.

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: February 17, 2017

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Residential Tenancy Branch