



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR

### Introduction

On January 6, 2017, 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 testified that he served the Tenant with the Application for Dispute Resolution and Notice of Hearing, by registered mail sent on January 10, 2017. 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 Landlords were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Landlord amended the amount of his monetary claim on January 18, 2017. The Landlord testified that Tenant had already moved out and the Landlord was not able to serve the amended application to the Tenant.

I find that the Tenant did not receive any notice of the Landlord's amended claim and therefore the Landlord's claim is restricted to the issues within the Application that was properly served to the Tenant on January 10, 2017. The Landlord's additional claims are dismissed with leave to reapply.

Since the Landlord testified that the Tenant has vacated the rental unit, the Landlord does not require an order of possession.

The Landlord was granted a request to amend the Application to keep the security deposit in partial satisfaction of the claim for unpaid rent.

### Issues to be Decided

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

- Can the Landlord keep the security deposit in partial satisfaction of unpaid rent?

### Background and Evidence

The Landlord testified that the tenancy began on August 1, 2007. Rent in the amount of \$814.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$350.00.

The Landlord served the Tenant a 2 Month Notice to End Tenancy for Landlord use of Property dated October 12, 2016.

The Landlord testified that the Tenant failed to pay the rent owing under the tenancy agreement.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") dated January 7, 2017, by posting it to the Tenant's door on January 7, 2017.

The Notice indicates the Tenant owes \$2,442.00 for rent that was due on January 2, 2017. 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 either Notice to end tenancy.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice. The Landlord testified that the Tenant has not paid any money to the Landlord since the 10 Day Notice was issued. The Landlord testified that the Tenant owes rent for the months of November, 2016, December 2016, and January 2017.

The Landlord testified that the Tenant moved out on January 17, 2017. The Landlord is not re-renting the rental unit as they want it for their own use.

The Landlord seeks a monetary order for unpaid rent in the amount of \$2,442.00.

### 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 10 Day 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. In addition, the Tenant did not dispute the 2 Month Notice within 15 days of receiving it.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. The Tenant has vacated the rental unit and the Landlord does not require an order of possession to be issued.

I find that the Tenant owes the Landlord rent for November 2016, December 2016, and for 17 days of January 2017.

I find that the Tenant owes the Landlord \$2,074.25 for unpaid rent.

I order that the Landlord can keep the security deposit of \$350.00 in partial satisfaction of the claim for unpaid rent. The Residential Tenancy Branch interest calculator indicates that interest of \$7.28 is owed on the deposit.

After setting off the security deposit, I find that the Landlord has established a total monetary claim of \$1,716.97 for the above mentioned dates. 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.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notices to end tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notices.

The Landlord is granted a monetary order for unpaid rent in the amount of \$1,716.97.

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 01, 2017

---

Residential Tenancy Branch