



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Trickle Creek Development Corp  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for an Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession and unpaid rent?

### Background and Evidence

The tenancy started on October 1, 2010. Rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. On March 3, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent of \$550.00 (the “Notice”). The Landlord states that this amount is calculated from a \$100.00 shortfall in March 2017 rent and unpaid rent of \$450.00 from May 2013. The Landlord agrees that in a previous Decision the Tenant was ordered to deduct \$100.00 from March 2017 rent. The Tenant paid April 2017 rent in full. The Landlord did not issue a receipt for use and occupancy only and did not speak at all to the Tenant after taking the rent for April 2017.

The Landlord states that he accepts that he made an error in including the unpaid rent of \$100.00 on the Notice. The Landlord states that the \$450.00 on the Notice however is from rent that was unpaid in May 2013 when the Landlord was going through foreclosure on the property. The Tenant states that that she was allowed to pay rent with her security deposit as contained in the Decision, dated July 3, 2013 that dealt with her application to cancel a 10 day notice to end tenancy issued for unpaid rent. I note that this Decision does not deal with whether or not the Tenant paid rent for May or June 2013 as it finds the 10 day notice for unpaid rent to be ineffective due to form and content.

The Landlord states that the Residential Tenancy Branch (the "RTB") is to blame for his having fill out so much paperwork to make a claim. The Landlord wishes to blame his woes and the shortage of rental housing on the RTB as opposed to a landlord diligently following up on his rental business, being knowledgeable about the Act, Regulations and policy and taking responsibility for conducting his business accordingly. The Landlord provided no evidence as to why the Landlord could not diligently pursue unpaid rent from 2013 other than to say that the Landlord did not know about the Decision dated July 3, 2013.

### Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. The legal doctrine of ***laches***, as set out in Black's Law Dictionary, provides that neglect to assert a right or a claim which, taken together with the lapse of time and other circumstances, causes prejudice to the other party and operates as a bar to that right or claim.

While the analysis in the previous Decision dated July 3, 2013 does not deal with the matter of unpaid rent per se, the Decision does set out facts that the Tenant used her

security deposit to pay for a portion of rent in 2013 while the property was in foreclosure. It may be that the matter of this rent may no longer be considered due to res judicata. However even if res judicata does not apply to the claim for unpaid rent from 2013, given that there is no evidence that the Landlord diligently pursued any rents for this period and in particular since the Decision dated July 3, 2013, and considering the significant amount of time that has since passed, I find that the doctrine of laches must now apply to the Landlord's claim for this rent and I dismiss the claim for unpaid rent from 2013. In effect, I find that no rents were payable at the time the Notice was served and it was therefore ineffective in ending the tenancy. As no rents were payable on March 1, 2017 and as the Landlord collected rent for April 2017 I dismiss the Landlord's application and claims for an order of possession and unpaid rent.

#### Conclusion

The Landlord's application is dismissed.

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: April 24, 2017

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Residential Tenancy Branch