



# 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;
- 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 April 13, 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 landlord's agent (the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant confirmed receipt of the landlord's Hearing Package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords Hearing Package.

### Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include April and May unpaid rent of \$1,400.00 total. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for April and May 2017 unpaid rent of \$1,400.00 total.

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?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2016 on a fixed term until July 30, 2016 at which time it continued on a month to month basis. Rent in the amount of \$700.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy, which the landlord still retains. The tenant testified that he vacated the rental unit on May 16, 2017, but left behind his construction job box on the patio.

The tenant confirmed receipt of the 10 Day Notice dated March 5, 2017 for unpaid rent of \$1,400.00. The notice indicates an effective move-out-date of March 15, 2017.

The landlord seeks a monetary order of \$2,800.00 for unpaid rent from February 2017 to May 2017. The landlord claimed that the tenant has not paid any rent for the above four months.

The tenant confirmed he has not paid February, March, April and May 2017 rent.

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, 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. Although the tenant testified he moved out May 16, 2017 he admitted to leaving behind his construction job box. As the tenant has not entirely vacated the unit, 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*, *Residential Tenancy Regulation* (the "*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 \$700.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from February 2017 to May 2017. Therefore, I find that the landlord is entitled to \$2,800.00 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 \$350.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,450.00.

#### 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 \$2,450.00 against the tenant.

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: May 18, 2017

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Residential Tenancy Branch