



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes: OPR, MNR, CNR, FF

### Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 12, 2017 with an effective date of April 22, 2017 (the “10 Day Notice”). The landlord applied for an order of possession and a monetary order. The tenant applied to cancel the 10 Day Notice and to recover the application filing fee.

The tenant did not attend the hearing. An agent attended for the landlord and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

At the outset of the hearing, the agent advised that the landlord had not been served with the tenant’s application and that the tenant vacated the rental unit on or about April 16, 2017. An order of possession was therefore no longer required.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing was considered. The agent provided affirmed testimony that these materials were sent by registered mail to the rental unit address. He also advised that the tenant left without providing a forwarding address. As the tenant did not leave a forwarding address, I accept that the tenant has been sufficiently served under s. 89(1)(c) and/or s. 71(2)(b) of the Act.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

### Background and Evidence

According to the written tenancy agreement in evidence and the agent’s affirmed and undisputed evidence, this tenancy began on June 1, 2016 as a month to month tenancy

with rent of \$1,200.00 payable on the first of each month. A security deposit of \$600.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The agent testified that the tenant made only a small partial payment for April's rent and that \$1105.00 remained outstanding as of the date of the 10 Day Notice. The tenancy agreement requires that the tenant pay partial utilities and a written demand dated March 29, 2017 requesting \$287.145 for the tenant's utilities was in evidence. A copy of the landlord's account ledger was also in evidence.

The agent stated that the tenant was served with 10 Day Notice on April 12, 2017 when it was left with another adult who identified herself as residing with the tenant. A Proof of Service document signed by a third party witness was in evidence in support of this.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the Proof of Service document in evidence, I find that the tenant was served with the 10 Day Notice on April 12, 2017. I further find that she has not yet paid the amounts owing.

Section 46(5) of the Act provides that if a tenant does not pay the amounts outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Although the tenant has applied to dispute the 10 Day Notice, she has not attended at this hearing and has accordingly not offered any reason for its cancellation. Accordingly, I find that this tenancy ended on April 22, 2017, the effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date.

Sections 7 and 67 of the Act establish 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. The landlord provided undisputed evidence that the tenant owes \$1,392.14 in unpaid rent and utilities and I award the landlord this amount.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$600.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

### Conclusion

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and utilities, and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent and utilities	\$1,392.14
Filing fee	\$100.00
Less security deposit	-\$600.00
<b>Total Monetary Order</b>	<b>\$892.14</b>

I issue a monetary order in the landlord's favour in the amount of **\$892.14**. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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*. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 29, 2017

---

Residential Tenancy Branch