



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

On April 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 Notice of Hearing, in person at the Tenant's residence on April 13, 2017. 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 Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues 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

The Landlord testified that the tenancy began on October 1, 2014. Rent in the amount of \$800.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$400.00.

The Landlord testified that the Tenant failed to pay all the rent that was due under the tenancy agreement for the month of March 2017.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") on the Tenant on March 11, 2017. The effective date of the Notice is March 20, 2017.

The Landlord testified that the Tenant was served the Notice by posting it on her door on March 11, 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. The Notice states that the Tenant has failed to pay rent in the amount of \$840.00. The Landlord testified that he included a \$40.00 late payment charge.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing within five days of receiving the 10 Day Notice. The Landlord testified that he received a \$200.00 payment from the Tenant on March 24, 2017. The Landlord testified that the payment was accepted but did not reinstate the tenancy. The Landlord provided a copy of a receipt in the amount of \$200.00. The receipt states that 10 Day Notice to end the tenancy still stands.

The Landlord testified that the Tenant owes \$2,200.00 for unpaid rent and \$120.00 for late payment charges. The Landlord testified that the tenancy agreement allows for a \$40.00 late payment fee. The Landlord provided a copy of the tenancy agreement.

The Landlord seeks an order of possession and a monetary order for unpaid rent and late fees in the amount of \$2,320.00.

There is no evidence before me that the Tenant disputed the 10 Day Notice.

### Analysis

Section 7 of the Residential Tenancy Regulation states that a Landlord may charge an administration fee of not more than \$25.00 for the return of a Tenant's cheque by a financial institution, or for late payment of rent.

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.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes \$600 for March 2017, rent and \$800.00 for April 2017, rent. I also find that the Tenant has not paid rent for the month of May 2017. The Landlord has suffered a loss of rent for May 2017. The Tenant is aware that she is required to

pay rent each month and therefore, pursuant to section 64 of the Act, I allow the claim to be amended to include the additional month of rent in the amount of \$800.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I permit the Landlord to amend his application to include the cost of the filing fee. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord is limited to a \$25.00 late rent payment charge. The Amount of \$40.00 listed in the tenancy agreement is an unenforceable term.

I find that the Landlord has established a total monetary claim of \$2,375.00 comprised of \$2,200.00 in unpaid rent, \$75.00 for late payments, and \$100.00 for the fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$2,375.00. This 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 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession and I grant a monetary order for the unpaid rent, late fees, and the cost of the filing fee in the amount of \$2,375.00.

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: May 18, 2017

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Residential Tenancy Branch