



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I attempted to confirm service. The landlord testified that he had given notice to the tenant on multiple occasions of his intention to end the tenancy, orally and in writing. A copy of a typed letter dated July 1, 2015 was submitted into written evidence as an example of the type of written notice issued to the tenant. The parties testified that the most recent notice to end the tenancy came by way of a post-it note placed on the tenant's door, with the handwritten message "10 Days to Leave for Unpaid Rent". The tenant confirmed receipt of the post-it note.

The tenant confirmed receipt of the landlord's application for dispute resolution dated May 18, 2017. Pursuant to section 89 of the Act I find that the tenant was served with the landlord's application.

At the outset of the hearing, the landlord stated that he had received some of the arrears and requested to amend the monetary amount of the claim sought. The landlord testified that the arrears is \$150.00 as at the date of the hearing. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to decrease the landlord's monetary claim from \$360.00 to \$150.00.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

This periodic tenancy began in September, 2015. The rental unit is the basement level of a detached home. The landlord's family occupies the upper floor. A copy of the written tenancy agreement signed by the parties was submitted into written evidence. The agreement provides that the monthly rent is \$1,380.00 payable on the first of the month. In addition the agreement says "Later rent pay charge \$10 per day". The copy of the agreement also contains a handwritten note that storage of \$160.00 monthly applies from August 1, 2016. The handwritten note is not signed or initialled by either party.

The landlord gave lengthy testimony regarding what he sees as issues with the tenant, his behaviour, his payment of rent, and the condition of the rental unit. The landlord testified that he has had numerous conversations with the tenant advising him of the intention to end the tenancy. The landlord testified that he has provided many written notices throughout the course of the tenancy, although only one from July, 2015 was submitted into written evidence. The landlord said that he has raised the rent by \$200.00 in December, 2016 and the current monthly rent should be \$1,580.00.

The landlord was not able to provide a clear explanation of how the arrears of \$150.00 for this tenancy is calculated, which payments were not provided in full and what remains unpaid.

### Analysis

Section 52 of the *Act* provides that:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form

While a copy of the notice to end tenancy was not submitted into written evidence the parties testified that it was issued on a post-it note with the words "10 Days to Leave for Unpaid Rent".

Based on the evidence of the parties I find that the notice does not conform to the requirements of section 52 and therefore is ineffective. I also find that the verbal requests and the written letter dated July 1, 2015 are ineffective as neither conforms to the requirements of a valid notice under section 52.

I find there is insufficient evidence to find that there is a rental arrear. The landlord was unable to clearly set out how he calculated the rental arrear for this tenancy. The landlord based a portion of his claim on fees such as a daily late fee and a new monthly rental amount. Residential Tenancy Regulations 7(1)(d) prohibits a late fee of more than \$25.00. A daily late fee is invalid under the Regulations. The landlord testified that he increased the monthly rent by \$200.00 in December, 2016 from \$1,380.00 to \$1,580.00. Section 43 of the *Act* and Regulation 22 sets out the allowable amount of rent increase and section 42 of the *Act* provides how a notice of rent increase must be provided to the tenant. Based on the evidence of the parties there is no indication that the landlord gave notice to the tenant in the prescribed manner. I find that there is insufficient evidence to find that there is a rental arrear to justify issuing a monetary order. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply raise the rent however they please or attempt to end tenancies without proper notice.

As the landlord has failed in his application he is not entitled to a return of the filing fee.

### Conclusion

The landlord's application is dismissed. This tenancy continues until ended in accordance with the *Act*.

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: June 30, 2017

---

Residential Tenancy Branch