



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPR, CNR, MNR, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession, for a monetary order for unpaid rent in the amount of \$750.00 and for the recovery of the filing fee. The tenant applied for an order to set aside a notice to end tenancy for nonpayment of rent.

Both parties attended the hearing and had opportunity to be heard. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Does the tenant owe rent?

### **Background and Evidence**

The tenancy began on October 01, 2016. The monthly rent is \$750.00 due on the first of each month. On July 04, 2017, the landlord served the tenant with a notice to end tenancy for nonpayment of rent that was due on July 01, 2017. The tenant disputed the notice in a timely manner.

The tenant stated that since the start of tenancy, she paid rent to the male landlord (AD), by e-transfer. The female landlord (TF) testified that on May 29, 2017, AD went missing. Both parties agreed that prior to AD's disappearance; the tenant had paid advance rent to AD for the month of June 2017. On June 10, 2017, TF informed the tenant that she did not have access to AD's email and provided the tenant with her own email address for future rent payments.

Despite having an alternative email address and being aware of the unfortunate circumstances of AD's disappearance, the tenant e- transferred rent for July 2017, to the email address of AD.

Since TF did not have access to this email account, she did not receive rent for July. The tenant provided proof by way of bank account statements that she had e-transferred the rent. On July 04, 2017, the landlord served the tenant with a notice to end tenancy for non-payment of rent in the amount of July's rent of \$750.00.

Approximately two months after AD went missing, his deceased body was found.

In August, the tenant sent a money order by mail to the landlord. The envelope was addressed to AD. The landlord stated that she did not open the envelope because it was not addressed to her.

The landlord is seeking an order of possession and a monetary order for rent for the months of July and August 2017.

**Analysis:**

Based on the sworn testimony of the both parties, I find that the tenant did make efforts to pay rent for these two months but did not do so according to the instructions given to her by the landlord. In these special circumstances, the tenant should have ensured that the rent was sent to the landlord TF at an email address she had access to and/or in the name of the surviving landlord.

Since the tenant did attempt to pay in a timely manner, I set aside the notice to end tenancy and order the tenant to e-transfer rent for July to the correct email address of TF by August 16, 2017.

The landlord agreed to return the money order for August rent to the tenant who will then e-transfer rent to TF. The tenant understands that failure to follow these orders will result in a notice to end tenancy.

Based on the sworn testimony of both parties, I find that the landlord has not proven that the tenant failed to pay rent for July and August 2017. It was determined that the tenant did pay rent for these months but chose to pay by a method that made the funds inaccessible to the landlord.

Accordingly the notice to end tenancy is set aside and the tenancy will continue.

Since the landlord has not been successful in her application she must bear the cost of filing this application.

**Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

I order the tenant to pay rent for July and August 2017 on or before August 16, 2017 by a method that provides the landlord access to the funds.

I further order the tenant to pay all future rents to the landlord by e-transfer to the updated email address of the landlord or by money order made out to the surviving landlord.

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: August 10, 2017

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Residential Tenancy Branch