



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding HIGHPOINT RELAY LTD & MCDONALD REALTY LTD.  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes OPR, MNR

#### Introduction

On August 28, 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 Landlords agent ('the Landlord') attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were each served with the Landlord's Application and Notice of Hearing using registered mail to the dispute address on September 14, 2017. The Landlord provided the registered mail receipt number as proof of service.

I find that the Tenants has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* ("the Act").

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

#### Preliminary and Procedural Matters

The Landlords agent submitted that the owner of property has changed property management companies. At the conclusion of the hearing she submitted a contract to show that MacDonald Realty is authorized to deal with tenancy matters for the dispute address. The Landlord's agent requested that the Landlords Application be amended to include the name of MacDonald Realty. The Landlords application has been amended accordingly.

#### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?

#### Background and Evidence

The Landlord testified that the most recent tenancy agreement began on August 1, 2016, as a fixed term tenancy to continue until July 31, 2017. Rent in the amount of \$1,550.00 is to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of March 2017.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 3, 2017, ("the Notice").

The Notice states that the Tenant has failed to pay rent in the amount of \$3,100.00 which was due on March 1, 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.

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

The Landlord testified that the Tenant made a partial payment of \$1,300.00 towards the rent owing; however, the amount of \$1,800.00 is still outstanding.

The Landlord testified that the Tenant has not paid the rent owing under the tenancy agreement for the following months:

- April 2017, in the amount of \$1,550.00
- May 2017, in the amount of \$1,550.00
- June 2017, in the amount of \$1,550.00
- July 2017, in the amount of \$1,550.00
- August 2017, in the amount of \$1,550.00
- September 2017, in the amount of \$1,550.00
- October 2017, in the amount of \$1,550.00
- November 2017, in the amount of \$1,550.00
- December 2017, in the amount of \$1,550.00

The Landlord applied for dispute resolution in August 2017. The Landlord requested to amend the application to include the loss of rent for the four months after the Landlord applied for this hearing. The Landlord wants to include a claim for unpaid rent for the months of September 2017, to December 2017.

The Landlord testified that the Tenants are still living in the rental unit.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$15,750.00.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and are 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 Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the Tenants owe the Landlord the \$1,800.00 that remains outstanding from the amount listed in the 10 Day Notice.

I find that the Tenants owe the Landlord rent in the amount of \$7,750.00 for the period between April 2017, to August 2017, and I find it reasonable to grant the Landlords request to amend the application to include the claim for additional unpaid rent of \$6,200.00 from September 2017, to December 2017. The

Landlord has suffered a loss of rent and the Tenants are still living in the rental unit. The Tenants are aware they are obligated to pay the rent in accordance with the tenancy agreement.

I find that the Landlord has established a total monetary claim of \$15,750.00 for unpaid rent for the above mentioned dates.

I grant the Landlord a monetary order in the amount of \$15,750.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

#### Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent in the amount of \$15,750.00.

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: December 05, 2017

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Residential Tenancy Branch