



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the 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 recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided undisputed affirmed testimony that the tenant was served in person with the notice of hearing package and the submitted documentary evidence (a copy of the 10 Day Notice dated October 19, 2017, a copy of a Proof of Service document dated October 19, 2017 a copy of a handwritten letter by the landlord dated November 1, 2017 and a two page note from the tenant). A review of the Residential Tenancy Branch File showed no record for the 10 Day Notice dated October 19, 2017, a copy of a Proof of Service document dated October 19, 2017 and a two page note from the tenant. The landlord stated that her husband, T.B. was present as a witness for service of the package.

I accept the landlord's undisputed affirmed testimony and find that the notice of hearing package and the submitted documentary evidence was properly served to the tenant in person on November 6, 2017 as per sections 88 and 89 of the Act.

### Issue(s) 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 and recovery of the filing fee?

### 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 applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed evidence that there is no signed tenancy agreement, but that the tenancy began on June 1, 2014 on a month-to-month basis. The monthly rent is \$850.00 payable on the 1<sup>st</sup> day of each month. No security deposit was requested or paid. No condition inspection report for the move-in was completed.

The landlord seeks an order of possession and a monetary claim of \$5,100.00 for unpaid rent which consists of:

\$850.00	Unpaid Rent, November 2014
\$850.00	Unpaid Rent, December 2014
\$850.00	Unpaid Rent, January 2015
\$850.00	Unpaid Rent, February 2015
\$850.00	Unpaid Rent, March 2015
\$850.00	Unpaid Rent, April 2015

The landlord provided undisputed affirmed evidence that she resides 6 months out of the year out of the country and that the tenant's monthly rent payments are to be deposited by the tenant into the landlord's bank account. In April 2015 the landlord returned from a trip and discovered that the tenant had failed to pay rent for the period November 2014 to April 2015 (a 6 month period). The tenant was advised of the unpaid rent issue and the tenant disputed the landlord's claims and stated that each monthly rent payment was made. The landlord claims that a review of her bank statements and communications with the various bank managers showed that no such deposits were made.

The landlord stated that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 19, 2017. No explanation was provided by the landlord over the period of time when she found the unpaid rent issue in April 2015 until October 19, 2017 when the 10 Day Notice was served. The landlord provided no explanation on the delay regarding the unpaid rent.

The landlord provided affirmed testimony that the 10 Day Notice dated October 19, 2017 sets out that the tenant failed to pay rent of \$5,850.00 that was due on April 1, 2015 and an effective end of tenancy date of October 29, 2017.

The landlord provided undisputed affirmed testimony that she is not aware of the tenant filing an application in dispute of the 10 Day Notice. The landlord also provided undisputed testimony that the tenancy continues and the only rental arrears are those noted in this application.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. In this case before me there is no record of the landlord submitting a copy of the 10 Day Notice for Unpaid Rent dated October 19, 2017. The Notice is not a trivial piece of information it is a foundation that the landlord would rely on to assist in their application to end a tenancy. The tenant is entitled to have a full answer and defence of any allegation made against them as is required under the Natural Laws of Justice. However, in this case, the landlord provided direct testimony regarding the service and content of the missing documents. I found this credible and accepted the landlord's undisputed evidence regarding the service and content of the 10 Day Notice dated October 19, 2017.

I note that the landlord failed to provide an explanation of why she served a 10 Day Notice dated October 19, 2017 when she discovered the issue of unpaid rent in April 2015. The landlord has also failed to provide an explanation of her request for unpaid rent totalling, \$5,100.00 for the 6 months of unpaid rent from November 2014 to April 2015 in comparison with the amount stated of unpaid rent on the 10 Day Notice for \$5,850.00.

I find in these circumstances that the landlord reinstated the tenancy by accepting rent from the period May 2015 to June 2018 as the landlord has indicated that no other rental arrears are owed and that no notice was given to the tenant that the landlord was still seeking an end to the tenancy. As such, the 10 Day Notice dated October 19, 2017 is set aside and the tenancy shall continue.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the landlord relies solely on the 10 Day Notice dated October 19, 2017. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence of unpaid rent. The landlord provided direct testimony that 6 months of unpaid rent occurred between November 2014 and April 2015, totaling, \$5,100.00 and has not provided any details regarding the discrepancy with the 10 Day Notice dated October 19, 2017 which provides for unpaid rent of \$5,850.00. On this basis, the landlord's monetary claim for unpaid rent is dismissed.

### Conclusion

The landlord's application is dismissed without leave to reapply.

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 12, 2018

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Residential Tenancy Branch