



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing by way of conference call. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 10 Day Notice issued for unpaid rent. Both parties confirmed receipt of each other's evidentiary packages. I find that both parties were duly served in accordance with the *Act*.

### Issue(s) to be Decided

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

Can the landlord recover a monetary award for unpaid rent?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

The parties agreed during the hearing that the tenant began occupying the unit on August 15, 2017. Rent was \$600.00 per month, and no pet or security deposits were collected at the outset of the tenancy.

On March 12, 2018 the parties were scheduled to appear before the *Residential Tenancy Branch* for a hearing before an arbitrator. This hearing which the landlord failed to attend was to consider the tenant's application disputing the landlord's 2 Month Notice to End Tenancy for landlord's use of property and for Orders pursuant to section 62 of the *Act* directing the landlord to comply with the *Act*. This hearing resulted in amongst other findings, that rent was to be reduced to \$550.00 per month, and a credit of \$375.00 was to be applied against March 2018 rent. The arbitrator held that the rent payment for March 2018 was to be \$225.00.

The landlord argued that no tenancy agreement existed between the parties and that occupation was allowed as part of an existing caretaker/employment arrangement. The landlord said he had no intention of ever creating a tenancy and did not ask for a pet or security deposit because his understanding of the living situation was that the tenant was an employee who was meant to serve as a caretaker of the property.

The tenant did not dispute that she was a caretaker on the property but argued that a tenancy had been formed.

On May 2, 2018 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. The 10 Day Notice stated that rent was unpaid for March, April and May 2018. The landlord acknowledged that rent was paid in its entirety for April and May 2018 on May 5, 2018.

Both parties agreed that the landlord refused to accept rent for March 2018 after the tenant attempted to pay him \$225.00.

### Analysis

During the hearing, the landlord repeatedly argued that this was not a tenancy, but was rather a caretaker arrangement with the tenant being permitted to occupy the unit as a result of her employment on the property.

I find the landlord's argument regarding the tenant's living arrangement to be irrelevant to the notice before me at the hearing. The landlord has applied for an Order of Possession based on a 10 Day Notice to End Tenancy. I will therefore only consider the notice submitted at the hearing. If the landlord feels that the tenant has overstayed in the rental unit after being relieved of her duties as a caretaker, there are other avenues under the *Act* which the landlord can pursue to seek an Order of Possession.

The 10 Day Notice issued to the tenant was given on May 2, 2018. The 10 Day Notice states that rent was unpaid in the amount of \$600.00 for March and for \$550.00 in April and May.

The parties agreed that the tenant paid rent in its entirety for April and May on May 5, 2018. Section 46 (4) of the *Act* states that, "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect." I find that the tenant has fulfilled the requirements of section 46(4) of the *Act*.

Both parties agreed that the tenant attempted to pay rent of \$225.00 for March 2018 and that this rent was rejected by the landlord. I find that the tenant made a significant effort to pay rent as it was due. A landlord may not refuse rent for one month, accept it on another, and then issue a notice to end tenancy for unpaid rent. I confirm the decision of the arbitrator from March 12, 2018 which states that rent for March 2018 is to be \$225.00 per month.

I dismiss the landlord's application for a monetary award and an Order of Possession. As the landlord was unsuccessful in his application, he must bear the cost of his own filing fee.

### Conclusion

The landlord's application for an Order of Possession is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The landlord's application for a monetary award is dismissed. The landlord must bear the cost of his own filing fee.

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: July 11, 2018

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Residential Tenancy Branch