



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FFL

### Introduction

On September 12, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’ agent (“the Landlord”) and the Tenant attended the teleconference hearing.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Tenant testified that he submitted three pages of evidence to the Residential Tenancy Branch (“RTB”) prior to the hearing.

A review of the RTB dispute resolution system indicates that the Tenant did not upload any documents to the RTB prior to the hearing. A review of the RTB case management system indicates that the Tenant did not submit any documents to the RTB prior to the hearing.

Since I find that the Tenant’s documents were never received by the RTB, and that the RTB rules of procedure requires the evidence to be received by the applicant and the RTB at least 7 days prior to the hearing, the Tenant was not permitted to provide any late evidence.

### 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?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties testified that the tenancy began on December 15, 2017, on a month to month basis. Rent in the amount of \$800.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$100.00. There is no written tenancy agreement in place.

The Landlord testified that the Tenant was consistently late paying the rent, and now he is failing to pay the rent at all. The Landlord testified that the Tenant has failed to pay the rent owing under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 19, 2018, ("the 10 Day Notice"). The 10 Day Notice indicates that the Tenant owes \$1,600.00 for rent. The Landlord explained that the Tenant had not paid the rent owing for June and July. The Landlord provided a copy of the 10 Day Notice.

The Landlord testified that the Tenant was served with the 10 Day Notice by posting it to the Tenant's door on July 19, 2018. The Landlord testified he never spoke directly to the Tenant after the 10 Day Notice was posted.

The 10 Day Notice dated July 19, 2018, indicates that the Tenant has failed to pay rent in the amount of \$1,600.00. 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.

The Tenant testified that he received the 10 Day Notice in July 2018, but he could not recall the specific date he received the Notice. The Tenant testified that he never disputed the 10 Day Notice because he reached an oral agreement with the Landlord that he could pay the outstanding June and July rent and remain in the unit. The Tenant testified that he cannot recall the date that he reached the oral agreement with the Landlord. The Tenant did not provide any documentary evidence to support that an oral agreement was reached.

The Landlord testified that the parties never reached an oral agreement to continue the tenancy and that there was never any conversation about an agreement.

The Landlord testified that the Tenant has not paid the rent for July; August; September; and October 2018. The Landlord is seeking an order of possession and a monetary order for \$3,200.00 for the unpaid rent.

In reply, the Tenant testified that he paid his rent for the months of July; August; September; and October 2018. He testified that he attended the Landlord's residence and paid the rent directly to the Landlord's daughter who has acted in the capacity of the Landlord. The Tenant testified that he always pays the Landlord in cash, and the Landlord never issues a receipt.

The Tenant testified that for employment he works for cash. He testified that he has no bank records to show that he withdrew money to pay the rent.

The Tenant testified that the rent for July; August; September; and October 2018, was paid to the Landlord's daughter by the second day of each month.

The Tenant provided a witness, Mr. R.L. who testified that he witnessed an argument between the Landlord and Tenant on July 21, 2018, regarding receipts.

The Landlord acknowledged that the Tenant paid the rent in cash and that rent receipts were not issued to the Tenant.

### Analysis

Section 46(5) of the Act provides that if a Tenant fails to dispute a 10 Day Notice or pay the rent within five days the Tenant is conclusively presumed under to have accepted that the tenancy ends on the effective date of the Notice.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities I make the following findings:

In accordance with section 90 of the Act, I find that the Tenant is deemed to have received the 10 Day Notice on July 22, 2018, the third day after it was posted to the door.

I find that the Tenant did not dispute the 10 Day Notice. The Landlord refuted the Tenant's suggestion that the parties entered into a verbal agreement that the Tenant could pay the outstanding rent and the tenancy would continue. The Tenant provided insufficient evidence to support that such an agreement was reached.

I find that there is insufficient evidence from the Tenant to support that he paid the rent owing for June and July 2018, within 5 days of receiving the 10 Day Notice.

I find that the Tenant is 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 Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Landlord breached the Act by failing to prepare a written tenancy agreement and by failing to issue receipts to the Tenant for cash payments of rent.

The burden of proof for the claim of unpaid rent rests with the Landlord. If the Landlord had issued receipts, the Landlord and Tenant could have provided better evidence of whether or not the cash rent was paid and received. The Landlord did not present his daughter at the hearing to provide direct testimony on the issue of whether rent payments were received by the Landlord.

I find that the Landlord has not provided sufficient evidence to prove that the Tenant has failed to pay the rent owing under the tenancy agreement. The Landlord's monetary claim for \$3,200.00 is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord had some success with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I order that the Landlord can retain the security deposit of \$100.00 for the cost of the filing fee.

### Conclusion

The Tenant failed to dispute a 10 Day Notice within 5 days of receipt and provided insufficient evidence that the rent was paid within 5 days of receiving the Notice. I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession for the rental unit effective 2 days after service on the Tenant.

The Landlord's claim for a monetary order for unpaid rent is dismissed due to insufficient evidence.

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: October 30, 2018

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Residential Tenancy Branch