



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FFL, CNR, OLC, FFT

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On September 20, 2018, the Tenant Mr. D.H. applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants also applied for an order that the Landlord comply with the Act, Regulation or tenancy agreement.

On September 24, 2018, the Landlord applied for an order of possession for the rental unit based on the issuance of a Notice to end tenancy. On October 15, 2018, the Tenants amended their application to include a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018.

The matter was set for a conference call hearing. Both parties were present at the hearing. The Tenant Mr. D.H. appeared; however Mr. P.H. did not.. The Landlord testified that both Tenants were separately served with the Notice of Hearing and the amended application by registered mail sent on September 28, 2018, and October 15, 2018. I find that both Tenants were served with the Notice of Dispute Resolution proceeding and amendment.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Section 47 of the *Act* states that a notice to end tenancy must comply with section 52 of the *Act* *[form and content of notice to end tenancy]*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

The Landlord issued the Tenants a notice to pay rent or end tenancy dated September 16, 2018. The Landlords testified that they understand that they issued a notice to end tenancy to the Tenants using an incorrect form. The Landlords understand that this notice is not effective or enforceable.

I set aside the Landlords Notice dated September 16, 2018.

The Tenant's application to set aside the Landlords notice dated September 16, 2018, is successful.

The hearing proceeded on the matter of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018.

### Issues to be Decided

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

### Background and Evidence

The parties testified that the tenancy began on in June 2018. Rent in the amount of \$2,400.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,200.00 and a pet damage deposit of \$200.00. The Landlord provided a copy of a tenancy agreement naming Mr. P.H. and Mr. D.H. as

Tenants. The Landlord testified that Mr. D.H. was the first to view the rental unit and the tenants moved into the rental unit at the same time.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for October 2018.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2018, ("the 10 Day Notice"). The Landlord testified that the Tenants were served with the 10 Day Notice by posting it to the Tenants door on October 2, 2018. The Landlord testified that she took a witness and she provided a proof of service document confirming the service of the 10 Day Notice.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$2,400.00 which was due on October 1, 2018. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

There is no evidence before me that that the Tenants made an application to dispute the 10 Day Notice dated October 2, 2018.

The Tenant, Mr. D.H testified that he never saw the 10 Day Notice dated October 2, 2018. He testified that he paid his co-tenant Mr. P.H. \$1,200.00 in rent and believed that Mr. P.H. paid the rent to the Landlord.

The Landlord testified that the Tenant Mr. D.H. paid him \$900.00 on September 11, 2018. The Landlord testified that the Tenants still owe rent money for the following months:

- September 2018, in the amount of \$1,500.00.
- October 2018, in the amount of \$2,400.00.
- November 2018, in the amount of \$2,400.00.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$6,300.00.

When asked about the outstanding rent that is owed, the Tenant stated "I guess so". He stated that he paid his portion of the rent to his co-tenant.

The Tenant testified that he believes his co tenant has already moved out of the rental unit.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that both Tenants were served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act.

I find that Mr. D.H is a Tenant. The tenancy agreement contains the name of Mr. D.H and he moved into the unit along with Mr. P.H. In addition, Mr. D.H. made a direct payment of rent to the Landlord and is the Tenant who filed to dispute the notice to end tenancy. The Tenants are jointly and severally liable for the tenancy.

I find that the Tenants did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice dated October 2, 2018, 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 October 15, 2018; 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 \$6,300.00 for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$6,400.00 comprised of \$6,300.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

### Conclusion

The Tenants failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice dated October 2, 2018. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the 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 and the cost of the filing fee in the amount of \$6,400.00.

The Landlord has leave to reapply for a monetary order regarding unpaid utilities.

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: November 05, 2018

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Residential Tenancy Branch