



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPN, OPM, MNSD, MNR, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a mutual end to tenancy agreement and for a monetary order for unpaid rent and the filing fee.

The landlord stated that he served the notice of hearing package on the tenant in person, on August 11, 2020, to an adult who lives in the rental unit. Despite having been served the notice of hearing package, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and the filing fee?

### **Background and Evidence**

The tenancy started in November 2015. The monthly rent is \$2,400.0 payable on the first of each month. The landlord testified that on April 01, 2019, the parties entered into a mutual end to tenancy agreement with an effective date of July 31, 2019.

The tenant continued to reside in the rental unit beyond July 31, 2019 and the landlord continued to collect rent. The landlord did not issue receipts for use and occupancy only and therefore the tenancy is considered reinstated.

The landlord testified that the tenant failed to pay full rent for the months of April, June, August and September 2020 and at the time of this hearing the tenant owed \$4,000.00 in unpaid rent. The landlord filed copies of text messages between the parties that confirm that the tenant was behind on rent.

On August 11, 2020, the tenant made this application for an order of possession. The landlord agreed that he had not served the tenant with a notice to end tenancy for non-payment of rent.

### **Analysis**

Section 52 of the *Residential Tenancy Act* states that in order to be effective, a notice to end a tenancy must be in writing and when given by a landlord to a tenant, must be in the approved form. In this case, the landlord did not serve the tenant with a notice to end tenancy and therefore the tenant was not put on notice that the tenancy would end for nonpayment of rent. In the absence of a notice to end tenancy, the tenant was unable to apply to cancel the notice. Therefore, the landlord is not entitled to an order of possession and accordingly this portion of his application is dismissed.

The landlord has filed documentation to support his claim for unpaid rent in the amount of \$4,000.00 and therefore I find that the landlord is entitled to his claim. Since the landlord has proven his case, I award him the recovery of the filing fee of \$100.00.

I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for **\$4,100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of \$4,100.00.

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: September 25, 2020

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Residential Tenancy Branch