



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing, by personal service on October 12, 2020, the tenant did not appear. A photograph shows the tenant with the package in their hand. I find that the tenant has been duly served in accordance with the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural matter

At the outset of the hearing the landlord request to amend their application to include subsequent unpaid rent since filing their application. As rent is the most basic term of all tenancies, I will allow the landlord request to include loss of rent for October, November, and December 2020.

### Issues 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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on September 3, 2020, in person on September 3, 2020. The landlord stated that the tenant yelled at them and threw the Notice on the ground. The landlord stated they then posted to the Notice to the door of the rental unit.

The landlord submits the tenant stated that "I will not pay rent and I will continue to live here rent free"

The landlord testified that the rent is \$800.00 per month due on the 1<sup>st</sup> and the tenant paid a security deposit of \$200.00.

The landlord testified that at the time the Notice was issued the tenant had failed to pay rent for June, July, August and September for a total rent owed of \$3,200.00. The landlord stated that the tenant has not paid rent for October, November and December 2020 and a further amount of \$2,400.00 has accumulated. The landlord seeks a monetary order for unpaid rent in the amount of \$5,600.00 and an order of possession.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord that the tenant was served with the Notice by personal service and again by posting to the door. **The tenant is cautioned that simply because they tossed the document on the ground, does not invalidate service, that is their personal choice.**

I accept the evidence of the landlord that the tenant at the time of the Notice had failed to pay rent for June, July, August, and September. While I accept a repayment plan would have been required for June, July, and August 2020; however, the tenant was required to pay all subsequent rent on the day it was due.

The tenant did not pay rent for September 2020, which is noted in the Notice, nor did they dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I have reviewed the Notice filed in evidence and there appears to have been technical issues when the landlord downloaded the form from the RTB website as it is missing some printed wording in the section that indicates why “I am ending your tenancy”. However, I am satisfied by the details written by the landlord that the tenant knew or should have known that they were required to pay the rent.

I cannot blame the landlord for the details missing on this form due to a technical issue when it was taken from the RTB website as a PDF document, as that would be highly unfair, especially since the tenant has not paid rent for eight months. Therefore, I find pursuant to section 68 and 62 of the Act, it is appropriate to amend 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 has established a total monetary claim of **\$5,700.00** comprised of unpaid rent from June 2020 up to and including December 2020 (seven months) and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$200.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$5,500.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: December 17, 2020

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Residential Tenancy Branch