

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This is an application filed by the Landlord for an order of possession and a monetary order as a result of a 10 day notice to end tenancy for unpaid rent and recovery of the filing fee.

Both parties attended the hearing and gave testimony. As both parties have attended and the Tenant has acknowledged receiving the Landlord's evidence which consists of a 10 day notice to end tenancy for unpaid rent dated March 22, 2012, I am satisfied that both parties have been properly served with the notice of hearing and evidence package under the Act. The Tenant has filed no evidence.

### Issue(s) 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?

### Background and Evidence

Both parties agreed that the Tenant was served with a 10 day notice to end tenancy for unpaid rent dated March 22, 2012. The effective date of the notice is shown as March 31, 2012. The notice also shows that rent of \$895.00 was due on March 21, 2012 and was not paid. Both parties agreed that the Tenant made a partial rent payment of \$695.00 in cash to the Landlord on either March 23 or 24<sup>th</sup> following the service of the notice. Both parties agree that a hand written receipt was issued for the accepted amount. Neither party have a copy of the receipt. The Landlord states that the Tenant was in rent arrears for January of 2012 for \$100.00, February of 2012 for \$200.00 and March of 2012 for \$200.00, totalling \$500.00. The Tenant has confirmed this in his direct testimony.

### Analysis

I accept the agreed upon direct testimony of both parties and find that the Landlord reinstated the Tenancy by accepting the partial rent payment for March 2012 of \$695.00 in cash. The Landlord failed to indicate to the Tenant that by paying the rent that he was not reinstating the Tenancy as evidence in the direct testimony of both parties. The

Landlord did not clearly tell the Tenant that the payment of some of the rent does not cancel the notice or did not specifically tell the Tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the Tenancy. The notice dated March 22, 2012 is set aside and the Tenancy shall continue.

As for the monetary order, the Landlord has established a claim for rent arrears of \$500.00. This was acknowledged and confirmed by the Tenant that arrears for January of \$100.00, \$200.00 for February and again \$200.00 for March was in arrears. Based upon the direct testimony of the Tenant, the Landlord is entitled to a monetary claim for \$500.00 in rent arrears. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for \$550.00 for the balance due under section 67 of the Act.

### Conclusion

The Landlord's application for an order of possession is dismissed.  
The Landlord is granted a monetary of \$550.00.

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: April 18, 2012.

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Residential Tenancy Branch