



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Raymar Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing originally dealt with an application by the landlord for an order of possession and a monetary order through the Direct Request Process. The tenant filed for a Review Consideration of that decision and order and was successful in having this hearing conducted. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Should the original decision and order be confirmed or amended or set aside?

### Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about December 1, 2013. Rent in the amount of \$800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. The tenant failed to pay rent in the month(s) of June and July and on July 9, 2014 the landlord served the tenant with a notice to end tenancy by posting the notice on the tenants' door. The resident manager later checked to see if the tenant was home and personally served the tenant the notice. The landlord stated that the tenant is still in arrears \$26.44 and still wishes to end the tenancy through an order of possession. The landlord stated the tenant made a payment on July 19, 2014 for which he was given a

receipt for “use and occupancy only and that the tenancy was not reinstated”. The landlord stated that the tenant has made subsequent payments by Interac and that the “machine doesn’t allow for personal messages like use and occupancy only”.

The tenant gave the following testimony:

The tenant stated that the landlords are lying about serving him the notice to end tenancy. The tenant stated that all of the rent including late fees has been paid up. The tenant stated that this issue is all due to him having a cat. The tenant stated that he paid August and September rent and that automatically re-instates his tenancy.

### Analysis

This was a highly contentious hearing. The tenant was extremely agitated throughout and was cautioned about his behaviour several times. I made numerous attempts to assist the tenant as it was evident that he was upset. I explained the hearing process to him and advised that I would assist as much as possible however he would repeatedly interrupt me and the landlord. .

The tenant continually stated that the landlords’ evidence was not true. The tenant contradicted himself several times during the hearing. The tenant stated he was not made aware of the Direct Request Process but did not question the landlords receipt for “use and occupancy only”, I find this statement to be highly unlikely. The tenant stated that he had paid all the rent but then later stated that he hadn’t paid the rent on time and that the late fees could be attributed to him being very busy at work and unable to pay on time. In addition the tenant acknowledged that he paid the July rent late on July 19, 2014. In his own testimony he stated “I was late paying but I thought we were all good”. The tenant would offer a version of the events and then when questioned about them he would offer another version. I found that the tenants’ testimony unreliable.

I accept the landlord’s and resident managers’ testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the

outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The landlord advised that the amount of arrears has not changed since the original hearing. The tenant stated that he feels his tenancy has been re-instated after paying August and September rent. The landlord advised that the tenant chose to pay those months by Interac and that there is no mechanism for the landlord to make a note on the receipt "for use and occupancy only". I accept that statement from the landlord as the tenant was aware there were outstanding issues as the tenant had already filed an application for review consideration in late August.

The landlord has already been granted the order of possession and monetary order from the Direct Request Process.

I hereby confirm the decision and orders from August 12, 2014.

#### Conclusion

The decision and orders made on August 12, 2014 are hereby confirmed, they are of full effect and force.

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 27, 2014

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Residential Tenancy Branch

