



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hung Gay Enterprises  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The landlord was also accompanied by an observer who did not partake in the proceedings and did not testify. The tenant did not object.

The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

The landlord's agent testified that this 6-month fixed term tenancy began on January 9, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 per month is payable in advance on the 1<sup>st</sup> day of each month. Since the tenant moved in on the 9<sup>th</sup> day of the month, the landlord collected a pro-rated amount of rent for the first month of the tenancy in the amount of \$780.00. At the outset of the tenancy the landlord collected a security deposit in the amount of \$550.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant did not pay any rent after the first month of the tenancy and is currently in arrears the amount of \$2,200.00 for the months of February and March, 2015. The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 6, 2015 by giving it to a roommate of the tenant. A copy of the notice has been provided and it is dated February 6, 2015 and contains an expected date of vacancy of February 16, 2015 for unpaid rent in the amount of \$1,100.00 that was due on February 1, 2015. No rent has been paid since the issuance of the notice, and the landlord has not been served with an application by the tenant disputing the notice.

The landlord seeks an Order of Possession and a monetary order in the amount of \$2,250.00 including recovery of the \$50.00 filing fee.

The tenant testified that he has recently become semi-retired, and having turned age 65 in December, 2014 is now entitled to pension income. However, there were some administrative errors and the tenant's pension money has not been received. The government has ensured that the money will be received by the end of this month amounting to just about \$3,300.00. Also, in May the tenant will be working his seasonal job providing additional income to maintain the rental unit, but unfortunately hasn't worked since September, 2015.

The tenant also testified that the notice was not served to a roommate.

The tenant is prepared to pay the rent and requests that the landlord provide until the end of March, 2015 to pay the rental arrears and rent for April, 2015. The landlord disagrees.

### Analysis

The *Residential Tenancy Act* is very clear offering very little discretion with respect to unpaid rent. Once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice.

In this case, the tenant denies that any roommate received the notice, however I accept the testimony of the landlord's agent that it was given to a person who apparently resides with the tenant on February 6, 2015 which is a method permitted by the *Act*. The tenant did not dispute the notice and did not pay the rent in full, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the notice and find that it is in the approved form and it contains information required by the *Act*, and I find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, the tenant does not dispute the amount of rental arrears, and I find that the landlord has established a monetary claim in the amount of \$2,200.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I leave it to the parties to deal with the security deposit in accordance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,250.00.

These orders are final and binding and may be enforced.

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: March 12, 2015

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Residential Tenancy Branch

