



# 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.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

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

### Background and Evidence

The landlord's agent testified that the tenant did not pay rent for July 2016, and was served with a notice to end tenancy for nonpayment of rent by posting to the door of the rental unit on July 10, 2016.

The landlord's agent testified that the tenant has not paid any rent for July 2016, August 2016, and September 2016. The landlord seeks an order of possession and a monetary order in the amount of \$2,520.00.

The landlord's agent testified that the tenant has also failed to pay their utilities in the amount of \$57.00.

The tenant testified through their interpreter that deny they received a notice to end tenancy. The tenant stated that they have not pay rent to the landlord since July 2016,

because the landlord has not made a requested repair. The tenant agrees to the amount of owed utilities.

The landlord's agent argued that the tenant received the notice when posted to the door as the landlord lives on the property and saw the tenant remove it from the door. The agent stated that the tenant was avoiding service as the tenant was informed earlier that the landlord would be serving them with documents to end the tenancy. The agent stated that since the tenant refused to open the door the notice was posted, which was witnessed and photographs were taken. The agent stated the tenant is simply attempting to avoid the Act.

### Analysis

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

I accept the landlord's evidence over the tenant's evidence that the tenant was served with the notice to end tenancy. In this case, the tenant was informed that they landlord would be serving them with a notice to end tenancy. When the landlord attended the tenant's rental unit the tenant refused to answer the door. The landlord then posted the notice to the door, which was photographed and witnessed. Later that day the landlord saw that the document had been removed from the door.

Under the Act, when a document is served in this matter it is deemed to have been served five days later. I find the tenant has failed to provide any clear evidence to rebut the service provision of the Act, and it is more likely than not the tenant was attempting to avoid service.

In this matter, the tenant had not paid the outstanding rent for July 2016, and did not apply to dispute the notice within the statutory time limit, 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.

Further, the tenant has not paid any subsequent rent for August 2016 and September 2016. Under section 26 of the Act, a tenant must pay rent when due under the terms of their tenancy agreement, at no time does the tenant have the right to withhold rent simply because they feel they are entitled to it or are justified to keep it. I find the tenant has breached the Act, when they failed to pay rent and this has caused losses to the landlord.

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 **\$2,677.00** comprised of unpaid rent for July 2016, August 2016, September 2016, unpaid utilities and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$430.00** 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 **\$2,247.00**. 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: September 13, 2016

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Residential Tenancy Branch