



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes

MNR, OPR

### Introduction

This hearing was held as a result of the tenant being successful in a Review Consideration Application to have the original decision and order that was in favour of the landlord suspended pending the outcome of this hearing. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues to be Decided

Should the original decision and orders be confirmed, varied or set aside?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about April 1, 2016. Rent in the amount of \$1150.00 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 \$575.00. The tenant failed to pay rent in the month(s) of June and July and July 3, 2016 the landlord served the tenant with a notice to end tenancy. The landlord stated that the amount of outstanding rent still remains at \$2300.00 as the tenant has paid the rent for August and September to which a receipt was issued for use and occupancy only. The landlord stated that the tenant is lying about paying him in cash or that he accompanied the tenant to the ATM to receive payment. The landlord requests that the original decision and order be confirmed.

The tenant gave the following testimony. The tenant stated that he paid the landlord in cash for June and July but did wasn't given a receipt for those months. The tenant stated that his bank records show that he withdrew money to pay the landlord.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant provided some bank statements that show he withdrew money however the amounts are varied and random. In addition, the tenant submitted an explanation for each amount and how much he alleges that he put aside for rent. I do not find the tenants documentation sufficient or his explanation compelling. I do not accept the tenants' submission that because he withdrew money from an ATM, that proves he must have paid his rent.

I accept the landlord's 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 has provided detailed and extensive documentation to support and prove his claim.

As for the monetary order, I find that the landlord has established a claim for \$2300.00 in unpaid rent. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1725.00 This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The original decision is confirmed but is varied as follows; the original order of possession is of full effect and force and using the offsetting provision as allowed under Section 72 of the *Act*, the landlord is granted a monetary order of \$1725.00.

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: September 21, 2016

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Residential Tenancy Branch