



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPR, MNR

### Introduction

On July 11, 2016 a non-participatory hearing took place to determine an Application for Direct Request (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent. The Adjudicator who had conduct of the non-participatory hearing rendered a written decision and issued the Landlord with an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,300.00. The Direct Request Decision and the orders were dated July 11, 2016. This finding was made on the basis that the Tenant had failed to pay full rent for the month of July 2016.

On July 18, 2016, the Tenant applied for a review of the Direct Request Decision on the basis that it was obtained by the Landlord using fraud. On July 28, 2016, the Arbitrator who had conduct of the Tenant’s review application determined that there was sufficient evidence to indicate that the Tenant may have had authority under the Act to not pay July 2016 rent. As a result, the Tenant was granted this review hearing; the decision and orders dated July 11, 2016 were suspended until the outcome of this review hearing.

### Preliminary Issues

Both parties appeared for this review hearing and provided affirmed testimony. The Landlord confirmed that he had received a copy of the Review Consideration Decision but he had not received notice of this hearing or any evidence from the Tenant despite the Review Consideration Decision requesting the Tenant to serve these documents within three days after receipt of them.

The Tenant testified that she personally served the documents and her evidence for this review hearing to the Landlord on August 19, 2016. The Landlord denied this and stated that he had called the Residential Tenancy Branch Information Line to request the call in details for this review hearing and also submitted evidence.

Before, I made any findings on the service of the documents which the parties were relying on for this review hearing, I turned my mind to determine which issues needed to be decided in this hearing.

The Tenant testified that prior to the Landlord issuing her with the notice to end tenancy for unpaid rent (the "10 Day Notice"), she had been served with a notice to end tenancy for the Landlord's use of the property (the "2 Month Notice"). The Notice was served on June 28, 2016 and had a vacancy date of August 31, 2016.

The Tenant testified that she immediately sent a notice to the Landlord explaining that pursuant to 2 Month Notice she was going to be vacating the rental unit earlier at the end of July 2016. As a result, she withheld rent for July 2016. However, the Landlord proceeded with the Application for which he obtained an Order of Possession and a Monetary Order for \$2,300.00. The Tenant testified that before the Landlord made the Application she had explained to him that she was withholding rent pursuant to the compensation that was payable to her under the 2 Month Notice.

The Landlord testified that he proceeded with the Application because the Tenant was not allowed to withhold the first month's rent (July 2016), only the second month of the 2 Month Notice (August 2016).

However, during the hearing the parties confirmed that the Tenant had vacated the rental unit pursuant to written notice she had given under the 2 Month Notice. Therefore, the Order of Possession was now moot.

The parties also confirmed that while the Tenant may not have had the authority to withhold July 2016 rent, she was still entitled to the compensation payable under the 2 Month Notice. The parties acknowledged that the Monetary Order issued to the Landlord dated July 11, 2016 was now also moot because what would have been owed to the Landlord under the 10 Day Notice would have to be offset with what was owed to the Tenant under the 2 Month Notice. As a result, the parties agreed that the orders issued to the Landlord dated July 11, 2016 were now moot and of no use and effect. Accordingly, I found that there was no need to make any findings on the service of documents for this hearing.

However, during the hearing, the parties confirmed that the evidence they had provided for this review hearing pertained to the security deposit. I informed the parties that this issue was not before me and that this matter would have to be dealt with separately pursuant to the requirements of the Act and through a separate hearing.

The parties were unable to come to agreement on whether the Landlord had been served with the Tenant's forwarding address in writing that would require the Landlord to act in making a request to keep it pursuant to Section 38(1) of the *Residential Tenancy Act* (the "Act").

Therefore, I gave the parties an option to put the Landlord on notice of the Tenant's forwarding address in this hearing. The parties agreed to this course of action. As a result, the Tenant provided the Landlord with her forwarding address, which I have also detailed on the front page of this Review Hearing Decision. The address was confirmed with both parties to ensure its accuracy and that the Landlord had noted it correctly.

As a result, I informed the Landlord that he was now put on notice of the Tenant's forwarding address pursuant to Section 38(1) of the Act and that he has up until October 7, 2016 to file a potential Application to keep or deduct the Tenant's security deposit.

### Conclusion

Section 82(3) of the Act provides that following a review hearing, the original decision or order may be confirmed, varied or set aside. I find that as the tenancy has now ended and there are no monies owed to any of the parties, the Direct Request Decision and related orders made on July 11, 2016 are now set aside. This file is now closed.

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 22, 2016

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Residential Tenancy Branch