



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RELIABLE REFERRAL SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant's Application: CNR, ERP, MNDC, OLC, RP, FF  
Landlord's Application: OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled for 11:00 a.m. on this date to deal with cross applications. The tenant filed to cancel 10 Day Notices to End Tenancy for Unpaid Rent; orders for repairs and emergency repairs; orders for compliance; and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and damage to the rental unit; and, authorization to retain the security deposit. The landlord appeared at the hearing but the tenant did not despite leaving the teleconference call open for over 40 minutes.

Since the tenant did not appear at the hearing scheduled to hear his application I dismissed his application entirely without leave to reapply.

With respect to the landlord's application, the landlord provided registered mail receipts to demonstrate that she sent the landlord's hearing documents to each named tenant via registered mail on September 3, 2015. The registered mail went unclaimed by the tenant(s). The landlord testified that the registered mail was sent to the rental unit and that she saw the tenant at the rental unit in late September 2015. Section 90 deems a party to have received documents five days after mailing even if that party refuses to accept or pick up their mail. Based upon the evidence before me, I was satisfied the tenant(s) was still residing at the rental unit when the landlord's hearing documents were mailed and I found the tenant(s) to be deemed served with the landlord's hearing documents five days after mailing. Therefore, I continued to hear from the landlord without the tenant(s) present.

It should be noted that both parties had identified two tenants in filing their respective applications: an individual and a corporation. Upon review of the tenancy agreement I found that the individual was the only tenant named in the tenancy agreement. The landlord testified that she discovered the tenant operated a corporation after the tenancy commenced. I found there to be insufficient evidence that there was a tenancy agreement between the landlord and the tenant's corporation. Therefore, I excluded the corporation as a tenant on the Orders that accompany this decision.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The fixed term tenancy commenced August 1, 2013 and was set to expire on February 28, 2016. The tenant paid a security deposit of \$1,825.00 and was required to pay rent of \$3,650.00 on the 1<sup>st</sup> day of every month. The tenant failed to pay rent for June 2015, July 2015 and August 2015.

On August 5, 2015 the landlord issued three 10 Day Notices to End Tenancy for Unpaid Rent: one for each month the tenant failed to pay rent. Each of the three 10 Day Notices indicate rent of \$3,650.00 is outstanding and have a stated effective date of August 15, 2015.

The landlord testified that each of the three 10 Day Notices was posted on the door of the rental unit on August 5, 2015 in the presence of a witness. The witness signed a Proof of Service document as to the posting of the 10 Day Notices and was at the hearing prepared to testify. The landlord also sent the 10 Day Notices to the tenant via registered mail on August 11, 2015. The landlord provided the registered mail receipt, including tracking number, as proof of service and a search of the registered mail tracking number showed that the registered mail was successfully delivered to the tenant on August 13, 2015.

The landlord testified that after serving the tenant with the 10 Day Notices the tenant did not pay any of the outstanding rent. I noted that the tenant or an agent for the tenant filed to dispute the 10 Day Notices and the tenant's application was received by the Residential Tenancy Branch on August 6, 2015.

The landlord testified that she attended the rental unit in late September 2015 and found it unlocked and windows open. The locks had apparently been changed by the tenant as her keys no longer worked in the locks. In securing the premises the landlord observed a few possessions still in the rental unit and more in the garage. Messages left for the tenant have not been responded to by the tenant. The landlord has yet to determine whether the tenant has vacated or abandoned the rental unit and requests an Order of Possession in the event he has not.

By way of the landlord's application the landlord requested recovery of the unpaid rent for the months of June, July and August 2015. The landlord also requested authorization to retain the security deposit. During the hearing, the landlord clarified that retaining the security deposit would be used toward partial satisfaction of the unpaid rent. The landlord had indicated on her

application that there may be some damage to the rental unit; however, I found this portion of her claim to be premature and I dismissed this portion of her application with leave.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, I was presented clear evidence that the landlord posted 10 Day Notices on the door of the rental unit on August 5, 2015. Where a document is posted on a door it is deemed to be received three days later unless there is evidence to the contrary. In this case, the tenant filed to dispute the 10 Day Notices on August 6, 2015 and provided to the Branch copies of the same three 10 Day Notices as did the landlord. Therefore, I find the tenant was in receipt of the 10 Day Notices on or before August 6, 2015.

Having heard undisputed evidence that the tenant did not pay the outstanding rent after receiving the 10 Day Notices and failed to appear at the hearing to present a basis for me to cancel the 10 Day Notices, I uphold the Notices and I find the tenancy ended 10 days after the tenant received the 10 Day Notices or August 16, 2015.

Since I have found the tenancy has ended I find the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession to serve and enforce in the event the tenant has not already vacated or abandoned the rental unit. The Order of Possession provided with this decision is effective two (2) days after service upon the tenant.

With respect to the landlord's monetary claims, upon review of the tenancy agreement, the 10 Day Notices presented to me, and the landlord's undisputed testimony, I find the landlord is entitled to recover the unpaid rent in the amount of \$3,650.00 for each of the months of June 2015, July 2015 and August 2015 as requested, or \$10,950.00.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent as requested. I also award the landlord recovery of the \$100.00 filing fee paid for the landlord's application.

The landlord remains at liberty to file another Application to seek any other damages or losses that may be incurred by the landlord as a result of the tenant's violations of the Act, regulations or tenancy agreement within the statutory time limit for doing so.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant that has been calculated as follows:

Unpaid Rent: June 2015, July 2015 and August 2015	\$10, 950.00
Filing fee	100.00
Less: security deposit	<u>(1,825.00)</u>
Monetary Order for landlord	\$ 9,225.00

### Conclusion

The tenant's application has been dismissed.

The landlord has been provided an Order of Possession that may be served and enforced in the event the tenant has not already vacated or abandoned the rental unit.

The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of unpaid rent and the landlord has been provided a Monetary Order for the balance of unpaid rent of \$9,225.00 to serve and enforce as necessary. The landlord's claim related to estimated damage to the property has been dismissed with leave to reapply.

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 15, 2015

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Residential Tenancy Branch

