



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on January 12, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; compensation for damage or loss under the *Act*, regulation and/or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed testimony that the Tenants were served notice of this application and this hearing by registered mail on January 14, 2016. Canada Post tracking information was submitted into evidence by the Landlord as listed on the front page of this Decision.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Landlord, I find that the Tenants were each served notice of this hearing in accordance with Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenants.

### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence that the Tenants entered into a month to month tenancy that began on November 1, 2015. Rent of \$950.00 was initially due on or before the last day of each month. The parties later agreed that rent would be payable by the first of each month. On or before November 1, 2015 the Tenants paid \$475.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay their January 1, 2016 rent the Landlord posted a 10 Day Notice to the Tenant's door on January 3, 2016 at 9:00 a.m. in the presence of a witness.

The Landlord stated the Tenants moved out of the rental unit in the evening of January 15, 2016 and did not pay the January 2016 rent. The Landlord continues to seek an Order of Possession and a Monetary Order for January 2016 rent of \$950.00. The Landlord stated that he was withdrawing his request for February 2016 rent.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on January 6, 2016, three days after it was posted to the door. Therefore, the effective date of the Notice was **January 16, 2016**.

The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 16, 2016**, pursuant to section 46(5) of the *Act*. The Tenants moved out of the unit as of January 15, 2016. Accordingly, I approve the Landlord's request for an immediate Order of Possession.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed unpaid rent of \$950.00 that was due January 1, 2016, in accordance with section 26 of the *Act*. Based on the aforementioned, I award the Landlord unpaid rent for January 1, 2016 in the amount of **\$950.00**. The Landlord withdrew his request for February 2016 rent.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord has been issued a Monetary Order in the amount of **\$1,000.00** (\$950.00 + \$500.00) which must be served upon the Tenants. This Order may be enforced through Small Claims Court.

### Conclusion

The Landlord was successful with his application and was granted an immediate Order of Possession and a Monetary Order for \$1,000.00.

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: February 02, 2016

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Residential Tenancy Branch

