



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that she personally served the tenant with the hearing documents on March 4, 2016 at the door of the rental unit. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

### Preliminary and Procedural Matter

The landlord referred to a previous dispute resolution proceeding held on February 17, 2016 involving a 10 Day Notice to End Tenancy for Unpaid Rent issued in December 2015 and a monetary claim for unpaid rent. The landlord provided the file number for that previous hearing and I have recorded it on the cover page of this decision.

Pursuant to the decision issued for that proceeding, after hearing from both parties, the Arbitrator was unsatisfied that both pages of the 10 Day Notice had been served upon the tenant and denied the landlord's request for an Order of Possession. However, the Arbitrator expressly permitted the landlord to issue a new 10 Day Notice and dismissed the landlord's monetary claim with leave to reapply. Accordingly, the matter before me involves a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on February 17, 2016.

### 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 and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

Under a verbal agreement, the tenancy started in May 2015 and the tenant paid a security deposit of \$350.00. The tenant was required to pay rent of \$700.00 on the first day of every month.

The landlord submitted that the tenant failed to pay rent starting in December 2015. As mentioned previously, the landlord served the tenant with a 10 Day Notice in December 2015 but that Notice was determined to be invalid at a previous hearing. I heard that on February 17, 2016 the landlord personally served the tenant with both pages of another 10 Day Notice to End Tenancy for Unpaid Rent, at the rental unit, in the presence of a witness who signed a Proof of Service and appeared at today's hearing. The 10 Day Notice indicates rent of \$2,100.00 was outstanding as of February 1, 2016 and has an effective date of February 27, 2016. The tenant did not file to dispute the 10 Day Notice served on February 17, 2016 and did not pay the outstanding rent. I heard that the tenant did present \$800.00 to the landlord on March 3, 2016 which the landlord accepted for use and occupancy only.

The landlord submitted that the tenant has not returned possession of the rental unit to the landlord although the landlord has not seen or heard the tenant in approximately a week. The landlord seeks an Order of Possession in the event the tenant has not already vacated or abandoned the rental unit. The landlord also seeks to recover unpaid and/or loss of rent for the months of December 2015 through April 2016 in the sum of \$3,500.00, less the \$800.00 payment received March 3, 2016.

Documentary evidence provided by the landlord included copies of: both pages of the 10 Day Notice issued on February 17, 2016; Proof of Service for the 10 Day Notice signed by the landlord and the witness; and, a receipt issued to the tenant for the March 3, 2016 payment.

### Analysis

Pursuant to section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. The Act defines tenancy agreement to include agreements entered into verbally. In this case, I accepted the undisputed evidence that the tenant was required to pay rent of \$700.00 on the first day of every month pursuant to a verbal tenancy agreement.

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 in the approved form. 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. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord personally served the tenant with both pages of a 10 Day Notice in the approved form on February 17, 2016. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended on February 27, 2016. I am further satisfied by the undisputed evidence before me that the landlord did not reinstate the tenancy upon receiving \$800.00 from the tenant on March 3, 2016. Accordingly, I grant the landlord's request for an Order of Possession to serve and enforce upon the tenant in the event the tenant has not already vacated or abandoned the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for the months of December 2015 through February 2016 and loss of rent for the months of March 2016 and April 2016 since the tenant has not returned possession of the rental unit to the landlord. In recognition of the \$800.00 payment received by the landlord on March 3, 2016 I find the landlord entitled to an award of \$2,700.00 [calculated as \$700.00 x 5 months less \$800.00 payment]. I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid / loss of rent: December 2015 – April 2016	\$2,700.00
Filing fee	100.00
Less: security deposit	<u>(350.00)</u>
Monetary Order	\$2,450.00

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and been provided a Monetary Order for the balance of \$2,450.00 to serve and enforce upon the tenant.

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: April 20, 2016

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Residential Tenancy Branch