



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

Both parties (the tenant through his daughter as representative) attended the hearing and gave sworn testimony. They confirmed that the 10 Day Notice to End Tenancy dated November 15, 2016 to be effective November 28, 2016 was served by mail and the Application for Dispute Resolution was served by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in 2000, a security deposit of \$302 was paid and rent is currently \$864 a month. It is undisputed that the tenant owes \$3428 unpaid rent until December 20, 2016, including NSF fees of \$25 for May, November and December rent. The landlord also claims \$864 for January rent for no notice to end the tenancy was received until January 5, 2017. The tenant had a series of leases with the latest being fixed term from September 2016 to August 31, 2017. The landlord no longer requires an Order of Possession as the tenant has vacated. He said there were damages but I declined to hear evidence on that as that was not a claim on his application.

The tenant's daughter who is representing him said her father's health had deteriorated and he is now in a care facility. She said she was alarmed when she visited him at his obvious health issues and she arranged for him to obtain a place in a care facility. She said when his tenancy commenced, this was a building designated as a 55+ building and the manager had called her periodically to advise of any problems of her father. However, the recent management change altered that and she was no longer advised of problems. She said her father had fallen and there was a pending law suit on that.

The manager who was attending for the landlord said that the building is a regular rental building, there is no service for seniors and he did advise the father who is an adult of the outstanding rent problems.

In evidence are registered mail receipts, copies of NSF cheques, the tenancy agreement and the Notice to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

An Order of Possession is no longer required.

#### **Monetary Order**

I find that there are rental arrears in the amount of \$3428 representing rental arrears and NSF charges from January 2016 to December 20, 2016. I find clause 19 of the lease and Residential Tenancy Regulation 7 provide for a \$25 NSF charge. I note the tenant started 2016 with a \$55 credit which is taken into account in this calculation. I find the tenant owes \$864 for rent for January 2017 as insufficient Notice to End his tenancy was given by the tenant. A full month's Notice is required to end a tenancy pursuant to sections 44 and 45 of the Act. Although the daughter said she was unable to contact the landlord by telephone or knocking on the door during the holiday period, I find personal service of a Notice to End Tenancy is not required; it might have been served by registered mail or other methods pursuant to sections 88 or 89 of the Act.

I find this tenancy is at an end as of January 31, 2017 and the landlord is free to re-rent the unit. I give the landlord leave to reapply for any damages within the legislated time limits. As discussed with the parties in the hearing, recent amendments to the Act and Regulations (Part 7) by Order in Council Dec. 2, 2016, provide that fixed term tenancies may be ended early under certain conditions such as confirmation of entry into long term care. I suggest the tenant consult these sections should the need arise.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I give the landlord leave to reapply for damages within the legislated time limits.

## Calculation of Monetary Award:

Rental arrears to December 31, 2016	3428.00
Rent for January 2017 due to short notice	864.00
Filing fee	100.00
Less security deposit with interest	-214.73
<b>Total Monetary Order to Landlord</b>	<b>4177.27</b>

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: January 04, 2017

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Residential Tenancy Branch