



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

On November 21, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call. The Landlord and Tenant attended the teleconference hearing and provided affirmed testimony. The Landlord testified that she served the documentary evidence I have before me to the Tenant.

The Parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began in February 2013, as a month to month tenancy. Rent in the amount of \$717.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$350.00.

The Landlord testified that the Tenant did not pay the rent for November 2016. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2016.

The Landlord served the 10 Day Notice to the Tenant on November 2, 2016, by posting the Notice to the Tenant's door. The Landlord provided the Residential Tenancy Branch with a copy of the 10 Day Notice.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$716.00 which was due on November 1, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant has five days to dispute the Notice. The effective date of the Notice is November 15, 2016.

The Tenant testified that he received the 10 Day Notice that was posted to his door and did not dispute the Notice.

The Landlord testified that the Tenant has not paid the rent for November 2016, December 2016, and January 2017.

The Tenant testified that he has not paid the rent for these months because he has no money.

The Landlord seeks an order of possession based on the Tenant failing to pay the rent within 5 days of receiving the 10 Day Notice on November 2, 2016.

The Landlord testified that the Tenant owes \$2,150.00 for rent for the months of November 2016, December 2016, and January 2017. The Landlord testified that she is not seeking a monetary order for the rent, but wishes to keep the security deposit for the rent owing.

### Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant did not pay the outstanding rent within five days of receiving the 10 Day Notice dated November 2, 2016, and did not apply to dispute the Notice.

Section 46 of the Act states: if a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution within five days, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that the Landlord is entitled to an order of possession due to the Tenant failing to dispute the Notice or pay the rent within five days of receiving the 10 Day Notice received on November 2, 2016. The Landlord is granted an order of possession, pursuant to section 55 of the Act, effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I order that the Landlord can keep the security deposit of \$350.00 in partial satisfaction of the rent that the Tenant owes the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant failed to pay the rent within five days of receiving the 10 Day Notice and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant and I grant a monetary order for the cost of the filing fee in the amount of \$100.00.

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: January 16, 2017

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Residential Tenancy Branch