



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MND, MNDC, FF

### Introduction

On November 22, 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 he 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 March 2105, and is currently a month to month tenancy. Rent in the amount of \$625.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$315.00.

The Landlord testified that the Tenant is frequently late paying the rent. When the Tenant did not pay all the rent owing for the month of September 2016, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 11, 2016.

The Landlord served the 10 Day Notice to the Tenant on September 11, 2016, by posting the Notice to the Tenant's door and by sending a copy of the Notice to the Tenant by email. 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 \$235.00 which was due on September 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 September 21, 2016.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice. The Landlord provided copies of emails exchanged between the parties in support of the Landlord's testimony that the outstanding rent was not paid by the Tenant within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant paid all the amount of rent owing to him on November 30, 2016.

The Tenant testified that he received the 10 Day Notice on September 11, 2016. The Tenant stated that he received the 10 Day Notice directly from the Landlord on September 11, 2016, and then stated that the Landlord should not be permitted to serve a 10 Day Notice using email.

The Tenant testified that he paid the rent within 5 days of receiving the 10 Day Notice dated September 11, 2016. The Tenant did not provide any documentary evidence to support his testimony that he paid the rent within 5 days of receiving the 10 Day Notice.

The Tenant stated that he doesn't feel it is right that the Landlord shared the personal emails between the parties.

The Landlord testified that the Tenant was issued another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 24, 2016. The Landlord testified that the Tenant paid all the outstanding rent after receiving that 10 Day Notice. The Landlord did not provide a copy of the 10 Day Notice issued on November 24 2016.

The Landlord testified that he accepted the late rent payment in November on the condition that the tenancy will end on January 31, 2017. The Landlord testified that he issued a receipt to the Tenant that stated the rent is being accepted on the condition that the tenancy ends on January 31, 2017. The Landlord testified that he wanted to give the Tenant more time to find a place to move to, and that the Landlord has rented the unit out to a new Tenant beginning February 1, 2017.

The Tenant disconnected from the hearing for a four minute period between 9:23 and 9:27 a.m.

The Tenant testified that the Landlord took his rent money on November 26, 2016, and let the Tenant think that he could leave on his own terms. The Tenant states that the Landlord was not clear that the tenancy was over.

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 September 11, 2016.

### 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 September 11, 2016, and did not apply to dispute the Notice. I prefer the testimony of the Landlord that the rent was not paid within 5 days of receiving the 10 Day Notice. The Landlord's documentary evidence of an email sent on October 6, 2016, supports the Landlord's testimony.

I find that the Tenant did not have a right under the Act to deduct an amount of rent or withhold paying a portion of the rent.

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 September 11, 2016. While I acknowledge the Tenants submission that email is not an accepted method of service under the Act, I find that the Tenant testified he received the 10 Day Notice on September 11, 2016.

The Landlord is entitled to an order of possession on the effective date of the 10 Day Notice. However, I accept the Landlord's testimony that he accepted rent from the Tenant on a conditional basis that the Tenancy will end on January 31, 2017.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective on January 31, 2017, 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.

Since the monetary claim within the Landlord's application relates to rent that has since been paid in November 2016, I dismiss the Landlord's claim for unpaid rent.

Since the tenancy is continuing until January 31, 2017, it is premature to deal with the security deposit. The Landlord's claim to keep the security deposit is dismissed.

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 January 31, 2017, 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 04, 2017

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Residential Tenancy Branch