



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said he served the 10 Day Notice to End Tenancy dated December 11, 2016 to be effective December 21, 2016 in the mail at the tenant's door and served the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) 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 a monetary order for rental arrears and to recover the filing fee for this application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. Neither party could remember exactly when the tenancy commenced but agreed it was about 5 years ago and that a security deposit was paid and rent is now \$850 a month. It is undisputed that the tenant has not paid rent for November, December 2016 and January 2017. The landlord said he will waive the monetary order for unpaid rent as he realizes the tenant has problems. He requests an Order of Possession effective January 31, 2017.

The tenant said he has had an unfortunate time. He suffers from severe depression, his wife left and he is dealing with issues in court. He believes he will get some cheques soon from the ministry and is receiving help from a social worker. He said he wished he had an advocate. The tenant wanted the landlord to discuss any alleged problems but I declined to hear this. I pointed out to him that the law in section 46 of the Act was clear. The tenancy was ending due to unpaid rent and not for cause under section 47.

In evidence are two Notices to End Tenancy for unpaid rent and registered mail tracking information. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Order of Possession:**

I find the landlord entitled to an Order of Possession. The weight of the evidence is that there is unpaid rent for November, December 2016 and January 2017. Section 46(5) of the Act states if a tenant who receives a 10 Day Notice for Unpaid rent does not pay the rent (within 5 days after receipt of the Notice) or make an Application for Dispute Resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit. I find the tenancy ended on December 21, 2016. The landlord is issued an Order of Possession effective January 31, 2017 as he requested.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the tenant did not dispute that he owes three months rent to the landlord (\$850x3) in total \$2550.00. I find the landlord may retain the security deposit of \$400 to offset the amount owing.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective January 31, 2017 and to a monetary order as calculated below. The calculation includes an award of the filing fee and retention of the security deposit to offset the amount owing. No monetary order will be issued to the landlord as he has requested to waive this.

**Calculation of Monetary Award:**

|   |         |
|---|---------|
| Unpaid rent                                 | 2550.00 |
| Filing fee                                  | 100.00  |
| Less security deposit (no interest 2012-17) | -400.00 |
| Total Monetary Order                        | 2250.00 |

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 26, 2017

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Residential Tenancy Branch

