



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant – CNR, CNR, MT

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for cause. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled and an agent for the landlord dialed into the conference call. The phone line remained open for 45 minutes; however, the tenant did not dial into the call during this time. Based on the above I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

Service of the landlord's hearing documents to the tenant was done in accordance with section 89 of the *Act*; served in person and by registered mail on January 17, 2017.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered for the landlord's application.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent (the landlord) testified that this fixed term tenancy started on December 01, 2014 for a term of one year, thereafter, reverting to a month to month tenancy. Rent for this unit is currently \$797.48 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$387.50 on December 01, 2014.

The landlord testified that the tenant failed to pay the rent on January 01, 2017 leaving an unpaid balance of \$797.48. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on January 04, 2017. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, or apply for Dispute Resolution or the tenancy would end on January 14, 2017. The tenant did not pay the outstanding rent but did file an application to dispute the Notice on January 11, 2017. Since that time the tenant has failed to pay rent for February, 2017 of \$797.48. The total amount of unpaid rent is now \$1,594.96.

The landlord testified that the tenancy agreement provides for a fee of \$25.00 being charged for late fees for any month in which rent is not paid on the day it is due. The landlord seeks to recover a late fee of \$25.00 for January and February, 2017.

The landlord has applied to retain the tenant's security deposit of \$ 387.50 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible. The landlord also seeks to recover the filing fee of \$100.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that there is outstanding rent for January and February, 2017 of **\$1,594.96**. Consequently, it is my decision that the landlord is entitled to recover this amount from the tenant.

With regard to the landlord's claim to recover \$50.00 in late fees for January and February , 2017; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees. Consequently, pursuant

to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$50.00** in late fees for January and February, 2017.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$387.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,594.96
Late fees	\$50.00
Filing fee	\$100.00
Less security deposit	(-\$387.50)
<b>Total amount due to the landlord</b>	<b>\$1,357.46</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on January 07, 2017. The effective date of the Notice is amended to January 17, 2017 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days and although the tenant did apply to dispute the Notice the tenant has not attended the hearing and her application is dismissed.

Based on the foregoing, I find that the landlord is entitled to an Order of Possession effective **two days** after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,357.46** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: February 08, 2017

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Residential Tenancy Branch