



# 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, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an 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; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

### Background and Evidence

The parties agreed that this fixed term tenancy started on August 24, 2016 and was due to end on February 28, 2017. Rent for this unit is \$ 750.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$375.00 on August 24, 2016.

The landlord testified that the tenant failed to pay all the rent on August 01, 2016 leaving an unpaid balance of \$172.00. The tenant failed to pay any rent for October, 2016. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on October 04, 2016. This was posted on the tenant's door and was deemed to have been served three days after. The tenant had five days to either pay the outstanding rent, or apply for Dispute Resolution or the tenancy would end on October 17, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenant has failed to pay rent for November, December, 2016 and January and February 2017. The total amount of unpaid rent is now \$3,922.00.

The landlord has applied to retain the tenant's security deposit of \$375.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on February 28, 2017.

The tenant did not dispute the landlord's testimony concerning the unpaid rent or to keep the security deposit in partial satisfaction of the unpaid rent. The tenant understands that the landlord is entitled to an Order of Possession and a Monetary Order.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties / 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 undisputed evidence before me that there is outstanding rent from August 2016 of **\$3,922.00**. Consequently, it is my decision that the landlord is

entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$375.00** 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	\$3,922.00
Filing fee	\$100.00
Less security deposit	(-\$375.00)
<b>Total amount due to the landlord</b>	<b>\$3,647.00</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 October 17, 2016. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective, as requested, on February 28, 2017 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 **\$3647.00** 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 at 1.00 p.m. on February 28, 2017. 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 20, 2017

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Residential Tenancy Branch