



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPR, MNR, MNSD, MNDC

### Introduction

This participatory hearing was scheduled pursuant to an Interim Decision issued by Adjudicator Doyon on January 25, 2017 in response to the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent under the Direct Request procedure. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant on January 28, 2017 at the rental unit address. The landlord confirmed that the tenant continues to reside in the rental unit. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested that the application be amended to include loss of rent for the month of February 2017 since the tenant continues to occupy the rental unit. Since the tenant has continued to benefit from occupancy of the rental unit I found the request non-prejudicial and I permitted the amendment. The landlord also requested the application be amended to include a request to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial since it reduces any Monetary Order provided to the landlord with this decision and I permitted the amendment.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent for January 2017 and February 2017?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one-month fixed term tenancy started on September 2, 2015 and continued on a month to month basis thereafter. The tenant paid a security deposit of \$262.50. The written tenancy agreement indicates the monthly rent is \$525.00 but it does not indicate the day in the month when rent is payable. The landlord testified that the tenant was required and had been paying rent on the first day of every month.

The tenant failed to pay rent on January 2017 and on January 2, 2017 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit in

the presence of a witness. The 10 Day Notice indicates rent of \$525.00 was outstanding as of "January 1, 2016" and has a stated effective date of January 12, 2017. The tenant did not pay the outstanding rent and did not file to dispute the 10 Day Notice.

The landlord testified that the tenant continues to occupy the rental unit and no monies were received for the month of February 2017.

The landlord seeks an Order of Possession effective as soon as possible and recovery of unpaid and/or loss of rent for the months of January 2017 and February 2017.

As documentary evidence for this proceeding, the landlord provided copies of: the tenancy agreement; the 10 Day Notice; a signed proof of Service for service of the 10 Day Notice; and, the registered mail receipt for service of the hearing package.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement. I accept the unopposed evidence before me that the tenant was required to pay rent of \$525.00 on the first day of every month.

Where a tenant does not pay rent the landlord is at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on January 2, 2017. As the 10 Day Notice was posted, it is deemed to be received by the tenant three days later, as provided under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads January 15, 2017 pursuant to section 53 of the Act.

Although the 10 Day Notice contained a typographical error, indicating the rent was outstanding as of January 1, 2016 instead of January 1, 2017, as provided under section 68(1) of the Act, I amend the 10 Day Notice to read January 1, 2017 as I am satisfied that the tenant ought to have known the 10 Day Notice should have read January 1, 2017.

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving it I find the tenancy ended on January 15, 2017 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I also find the landlord entitled to recover unpaid rent for January 2017 plus loss of rent for the month of February 2017 since the tenant continues to occupy the rental unit. I also award the landlord the filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: January 2017	\$525.00
Loss of Rent: February 2017	525.00
Filing fee	100.00
Less: security deposit	(262.50)
Monetary Order	\$887.50

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$887.50 to serve and enforce upon the tenant.

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 21, 2017

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Residential Tenancy Branch