



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

On May 2, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing at 9:00 a.m. on this date.

The Landlords attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served with the Notice of Hearing by posting the Notice of Hearing to the Tenant's door on January 31, 2017 at 7:58 pm. I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89(2) and 90 of the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Preliminary and Procedural Matters

The Landlord is seeking an order of possession and a monetary order for unpaid rent and testified that the Notice of Hearing was posted on the Tenant's door.

Section 89 (2) of the Act permits service of an application for dispute resolution by a Landlord seeking an order of possession, by attaching a Notice of Hearing to a Tenant's door. Section 89(1) of the Act does not permit service of an application for dispute resolution by posting it to a person's door.

Therefore, I find that the Landlord's application for an order of possession can proceed; however; the Landlord's claim for unpaid rent was not served according to section 89(1) of the Act and is dismissed with leave to reapply.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlords testified that the tenancy began on May 12, 2016, as a month to month tenancy. Rent in the amount of \$1,500.00 is to be paid on the first day of each month. The Landlords provided a copy of the tenancy agreement.

The Landlords testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2017.

The Landlords testified that the Tenant was served with the Notice by posting it to the Tenant's door on January 5, 2017. The Landlords provided a copy of the 10 Day Notice.

The Notice states that the Tenant has failed to pay rent in the amount of \$11,000.00 which was due on January 1, 2017. 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 had five days to dispute the Notice. The effective day of the 10 Day Notice is January 15, 2017.

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

The Landlords testified that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlords testified that the Tenant has not paid any rent since May 2016.

There is no evidence before me that the Tenant applied to dispute the 10 Day Notice within 5 days of receiving it.

The Landlords are seeks an order of possession due to unpaid rent.

### Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities, I find that the Tenant has not paid the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective two days 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.

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.

Conclusion

The Tenant failed to pay the rent and did not file to dispute the Notice within 5 days of receiving it. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlords are granted an order of possession effective 2 days after service on the Tenant.

The Landlords have liberty to reapply for dispute resolution for a monetary order for unpaid rent.

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 27, 2017

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Residential Tenancy Branch