



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 15, 2017 the Landlord served the Tenant by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant was deemed served with the Dispute Resolution Direct Request Proceeding documents on February 20, 2017, five days after they were mailed, pursuant to section 89 of the Act.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of the Landlord's Application for Direct Request and the Monetary Order Worksheet indicating the Landlord was seeking \$1,350.00 payment for February 2017;
- A copy of a residential tenancy agreement which was signed by both parties for a tenancy that commenced on April 1, 2016 for the current monthly rent of \$1,350.00 which was due on the first day of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2017, with an effective vacancy date listed as February 15, 2017, due to \$1,350.00 in unpaid rent that was due on February 1, 2017.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on February 2, 2017 at 11:30, when it was posted to the Tenant's door, in the presence of a witness.

### Analysis

**Order of Possession** - I have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on February 5, 2017, three days after it was posted, and the effective date of the notice would be February 15, 2017; pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 and I hereby grant the Landlord an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

**Monetary Order** – The evidence supports that the Tenant failed to pay the rent that was due on February 1, 2017, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$1,350.00**.

The Tenant is hereby ordered to pay the Landlord \$1,350.00, forthwith. In the event the Tenant does not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$1,350.00** which may be enforced through Small Claims Court upon service to the Tenant.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

The Landlord was successful with their application and was awarded an Order of Possession and a Monetary Order.

This decision is final, legally binding, and 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