



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the Application for Dispute Resolution and other required hearing documents were posted to the door of the rental unit on January 18, 2017.

Section 89 of the Act provides for ways an Application for Dispute Resolution must be served upon the respondent. Where a landlord seeks an Order of Possession, section 89(2) permits an Application to be posted to the door of the tenant's residence. However, an Application for a Monetary Order must be served in person or by registered mail, unless the applicant has authorization from the Director to serve in another way, under section 89(1).

Having been satisfied the landlord served the Application for Dispute Resolution on the door of the tenant's residence, I continued to hear from the landlord with respect to the landlord's request for an Order of Possession but I dismissed the landlord's request for a Monetary Order with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord testified that the tenancy commenced on or about June 2012 with a former landlord. The landlord took over management of this property approximately 3.5 years ago and there is no written tenancy agreement. After issuance of Notice(s) of Rent Increase, the tenant's monthly rent is \$768.75 due on the first day of every month.

The landlord received \$626.25 from the Ministry on behalf of the tenant for the month of October 2016. The tenant failed to pay the shortfall of \$142.50.

The landlord did not receive a rent payment from the Ministry or from the tenant for the month of November 2016 or any month thereafter.

On November 15, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit indicating \$911.25 was outstanding as of November 1, 2016. The 10 Day Notice has a stated effective date of November 25, 2016.

The landlord testified that the tenant did not pay the outstanding rent and the tenant did not apply to dispute the 10 Day Notice. The tenant continues to occupy the rental unit and has not paid any monies for the continued occupation of the rental unit.

The landlord seeks an Order of Possession effective as soon as possible.

Documentary evidence provided for my review was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and a ledger showing the rental arrears.

### Analysis

Under section 26 the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. The Act recognizes oral tenancy agreements under the definition of "tenancy agreement". Accordingly, oral agreements are enforceable and I accept that the tenant was required to pay rent in the amount of \$768.75 on the first day of every month based upon the unopposed evidence of the landlord.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with 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 unopposed evidence before me that the landlord posted the 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on November 15, 2016. Pursuant to section 90 of the Act, it is deemed to be received by the tenant three days later.

Accordingly, the stated effective date automatically changes to read November 28, 2016 under section 53 of the Act.

Since the tenant failed to pay the outstanding rent or file an Application to dispute the 10 Day Notice, I find the tenant is conclusively presumed to have accepted that the tenancy would end on November 28, 2016 and the landlord entitled to regain possession of the rental unit.

Provided to the landlord with this decision is an Order of Possession that is effective two (2) days after service.

### Conclusion

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

The landlord's monetary claims against the tenant are dismissed with leave to reapply.

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 07, 2017

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Residential Tenancy Branch