



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on October 28, 2011. Rent of \$769.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$365.00 as a security deposit. The Tenants had a credit of \$.90 and failed to pay rent for January 2017. On January 3, 2017 the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the "Notice"). The Tenant did not dispute the Notice and did not pay February rent when it was due. On February 28, 2017 the Tenant paid the Landlord \$1,680.00 and the Landlord issued a receipt for "use and occupancy only" and also verbally informed the Tenant that they would still be pursuing an order of possession. No rent was paid for March 2017 and the Tenant has not moved out of the unit. The Landlord claims full rent for March 2017 and an order of possession effective March 31, 2017.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the undisputed evidence of the Landlord I find that the Landlord gave the Tenant the Notice and the Tenant did not dispute the Notice or pay the full rent within 5 days. As a result I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until a tenancy ends. Based on the Landlord's evidence, I find that the Tenant failed to pay \$768.10 for January 2017 and \$769.00 for February 2017 owing a total of \$1,537.10. After deducting the \$1,680.00 paid the Tenant was left with a credit of \$142.90. The Tenant then failed to pay rent for March 2017 leaving an entitlement to rents owed of **\$626.10** (\$769.00 - 142.90). As the Landlord's application has been successful I find that the Landlord is also entitled to the **\$100.00** filing fee for a total entitlement of **\$726.10**. Deducting the security deposit plus

zero interest of **\$365.00** from the entitlement leaves **\$361.10** owed by the Tenant to the Landlord.

Conclusion

**I grant** an Order of Possession to the Landlord effective March 31, 2017.

**I order** that the Landlord retain the **deposit** and interest of \$365.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$361.10**. If necessary, this order may be filed in the Small Claims 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: March 06, 2017

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Residential Tenancy Branch

