



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage Merritt Real Estate Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant attended the call. The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing by another agent of the landlord who posted the documents to the door of the rental unit on or about February 9, 2017 with a witness present. The landlord was given the opportunity to provide proof of such service to me by facsimile after the hearing had concluded. I have now received a statement signed by the person who served the hearing package confirming that information.

The landlord's agent also advised that rent has been paid in full and the landlord's application for a monetary order is withdrawn.

Since the landlord has withdrawn the application for a monetary order, I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2016 and is not sure if the tenant still resides in the rental unit. The tenant has advised the landlord's agent that she has moved out, but some possessions still remain. Rent in the amount of \$850.00 per month is payable on the 1<sup>st</sup> day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 as well as a pet damage deposit in the amount of \$425.00 which are both still held in trust by the landlord. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that on January 11, 2017 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated January 11, 2017 and contains an effective date of vacancy of January 21, 2017 for unpaid rent in the amount of \$850.00 that was due on January 1, 2017. The landlord's agent personally handed it to the tenant's adult son, who resides with the tenant.

The tenant has not served the landlord with an application for dispute resolution disputing the notice, however, the tenant's estranged husband paid the rental arrears for January and February, 2017 in full on February 24, 2017 in addition to rent for March, 2017.

The landlord seeks an Order of Possession to ensure that the tenancy has ended before the landlord enters the rental unit.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the undisputed testimony of the landlord's agent and I am satisfied that the landlord's agent served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 11, 2017 by personally handing it to the tenant's adult son who apparently lives with the tenant. The tenant did not pay the rent, and the landlord's agent testified that the landlord has not been served with an application for dispute resolution disputing the notice, and I have no such application before me. Rent has been paid, but not within 5 days as required. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to retain that amount from the security deposit currently held in trust, and to deal with the balance of the security deposit and the pet damage deposit in accordance with the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep \$100.00 of the security deposit as recovery of the filing fee, and to deal with the balance of the security deposit and the pet damage deposit in accordance with the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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 07, 2017

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Residential Tenancy Branch

