



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding ROYAL LEPAGE WOLSTENCROFT REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and loss of rent, late fees, and authorization to retain the security deposit. The landlord and one of the co-tenants appeared at the hearing.

I was presented two registered mail receipts as evidence the landlord sent the hearing documents to each tenant by registered mail on February 17, 2017. I also heard that on February 20, 2017 two hearing packages were personally served upon the male co-tenant appearing at the hearing. The tenant appearing at the hearing confirmed that he was representing both himself and the co-tenant.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and loss of rent, plus late fees, as claimed?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy started in January 2010 and the tenants paid a security deposit of \$1,100.00. The tenants are currently required to pay rent of \$2,263.00 on the first day of every month. The addendum to the tenancy agreement contains a term that permits the landlord to charge a late fee of \$25.00 where rent is paid late.

It is undisputed the tenants failed to pay rent for the months of January 2017 and February 2017 and the tenants have not paid any monies for the month of March 2017 but continue to occupy the rental unit.

On February 3, 2017 the landlord personally gave a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the female tenant's mother, who was staying at the rental unit at that time. The landlord subsequently received confirmation from the male tenant's father, who resides on the property with the tenants, that the 10 Day Notice was received.

The 10 Day Notice indicates rent of \$4,551.00 was outstanding as of January and February 1, 2017. The amount is the sum of the rent due for both months and a late fee. The tenants did not pay the outstanding rent or file to dispute the 10 Day Notice.

The tenant acknowledged that all of the facts put forth by the landlord are accurate. The tenant stated that the woman who received the 10 Day Notice from the landlord is his co-tenant's mother who was staying with them for five or six days and that she gave the 10 Day Notice to his co-tenant. The tenant explained that he is the income earner for the household and he fell ill, requiring hospitalization, and could not work. As a result he was not making any money and could not pay the rent. The tenant stated that he has recently returned to work and seeks to continue the tenancy by entering into a payment plan with the landlord.

The landlord appearing at the hearing is the property manager for the owner and responded by stating he will have to consult with his client about the tenant's proposal but at this time the landlord requests the Order of Possession and Monetary Order be provided.

The landlord seeks a Monetary Order for unpaid and loss of rent for three months of January 2017 through March 2017, plus late fees of \$25.00 for each of these months.

### Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy to End Tenancy for Unpaid Rent. A tenant has five days after receiving a 10 Day Notice to pay the outstanding rent to nullify the 10 Day 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 10 Day 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 undisputed evidence before me that the tenants failed to pay the rent of \$2,263.00 for each of the months of January 2017 and February 2017 and the landlord gave the 10 Day Notice to an adult staying with the tenants in the rental unit on February 3, 2017. The tenant appearing before me acknowledged that the 10 Day Notice was then given to his co-tenant. Section 88 of the Act permits a landlord to give a document, including a Notice to End Tenancy, to an adult person who apparently resides with the tenant at the rental unit. The woman who received the 10 Day Notice may not be considered to be residing in the rental unit but I am satisfied the 10 Day Notice was subsequently received by one of the co-tenants and I deem the tenants sufficiently served pursuant to the authority afforded to me under section 71 of the Act.

Since the tenants did not pay the outstanding rent and did not dispute the 10 Day Notice within five days, I find the tenancy ended on the effective date of February 13, 2017. The tenants' inability to pay rent is not a basis to set aside the 10 Day Notice. Accordingly, I find the landlord entitled to an Order of Possession to serve and enforce as necessary. The landlord is provided an Order of Possession that is enforceable two (2) days after service upon the tenants.

Based upon the undisputed evidence that the tenants did not pay rent for the months of January and February 2017 I find the landlord entitled to recover the unpaid rent and late fees for each of those months, as requested. Since the tenants remain in possession of the rental unit I further award the landlord loss of rent for the month of March 2017. I make no award for a late fee of the month of March 2017 since the tenancy agreement and its terms ended in February 2017.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: January and February 2017	\$4,526.00
Late fees: January and February 2017	50.00
Loss of Rent: March 2017	2,263.00
Filing fee	100.00
Less: security deposit	<u>(1,100.00)</u>
Monetary Order	\$5,839.00

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$5,839.00 to serve and enforce upon the tenants.

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 15, 2017

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Residential Tenancy Branch