



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAJPUR HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing documents on March 14, 2017 or March 15, 2017 at the rental unit. I accepted that the tenant was duly served with notification of this hearing and I continued to hear from the landlord without the tenant present.

The landlord requested that the application be amended to seek authorization to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the unpaid rent. The landlord also requested that the monetary claim be adjusted to reflect the current outstanding balance of rent which reflects a partial payment made after the landlord filed. I found all of these requests to be non-prejudicial to the tenant since any Monetary Order I grant to the landlord will be less than that applied for and I permitted the amendments as requested.

### 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 rent?
3. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of unpaid rent?

### Background and Evidence

The tenancy started January 1, 2015 and the tenant paid a security deposit of \$425.00. The tenant subsequently paid a pet damage deposit of \$425.00. The tenant is required to pay rent of \$850.00 on the first day of every month.

I heard that the tenant has been in rental arrears for a considerable period of time despite her repeated promises to pay the arrears. On February 8, 2017 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"). The tenant signed the Proof of Service form acknowledging receipt of the 10 Day Notice.

The 10 Day Notice indicates rent of \$5,685.00 is outstanding as of February 1, 2017 and has a stated effective date of February 18, 2017. The tenant did not file to dispute the 10 Day Notice. The tenant did not pay the rental arrears within five days of receiving the 10 Day Notice. A promise to pay \$1,000.00 by the end of February 2017 was unfulfilled and only \$500.00 was received.

The landlord testified that as of April 3, 2017 the balance of outstanding rent was \$5,900.00. The landlord testified that the tenant sent an e-transfer of \$308.00 last week and then cancelled the transfer. Another e-transfer was received in the amount of \$208.00 which was deposited by the landlord. The landlord testified that after applying the \$208.00 payment the outstanding balance is \$5,692.00 currently. The landlord seeks to recover this amount from the tenant by way of the security deposit and pet damage deposit and a Monetary Order for the balance.

The landlord stated that in a recent conversation with the tenant he told the tenant he was agreeable to negotiating a vacate date with her upon receipt of payment of the rental arrears but that the tenant was still expected to appear at the hearing. Since she did not and the tenant has not paid the rental arrears, the landlord requested an Order of Possession effective two (2) days after service upon the tenant.

Documentary evidence that accompanied the landlord's application included copies of: the tenancy agreement; the 10 Day Notice; a signed Proof of Service of the 10 Day Notice; and, a letter addressed to the tenant on January 24, 2017 outlining her rental arrears as of that date.

### 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 that is due 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 served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on February 8, 2017. Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving the Notice I find the tenant conclusively presumed to have accepted that the tenancy would end on February 18, 2017. Accordingly, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent in the amount requested of \$5,692.00. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the rent owed the landlord.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

|                          |                 |
|--------------------------|-----------------|
| Unpaid Rent              | \$5,692.00      |
| Filing fee               | 100.00          |
| Less: security deposit   | (425.00)        |
| Less: pet damage deposit | <u>(425.00)</u> |
| Monetary Order           | \$4,942.00      |

#### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and pet damage deposit and has been provided a Monetary Order for the balance of \$4,942.00 to serve and enforce upon the tenant.

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: April 12, 2017

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Residential Tenancy Branch