



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR OPR MNDC FF

### **Introduction:**

Only the landlord attended and gave sworn testimony. They said they served the Application on the tenant by registered mail and confirmed receipt of the tenant's Application by registered mail. They provided evidence that they served the 10 Day Notice to End Tenancy dated March 15, 2017 to be effective March 28, 2017 by posting it on the tenant's door. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and other costs;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- d) To extend the time to file this Dispute to the 10 Day Notice to End Tenancy for they had a serious and compelling reason for filing late;
- e) To cancel a Notice to End Tenancy for unpaid rent; and
- f) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent and they are entitled to an Order of Possession and a monetary order for rental arrears, other costs and filing fee?

Or is the tenant entitled to any relief?

### **Background and Evidence:**

Only the landlord attended the hearing, although the tenant had also filed an Application to be heard at the same time. The landlord was given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced March 1, 2017 on a fixed term lease to February 28, 2018, that rent is \$2550 a month and no security deposit was paid as the cheque was returned NSF. The landlord said the tenant has paid no rent to date. Their first cheque for March rent and security deposit was returned NSF and although they promised to pay in cash, they have paid nothing.

The tenant did not attend to support their application. They said they disputed the Notice to End Tenancy late because their son was in hospital and they have boxes in the rental unit but are not really staying there. They are staying in the hospital. They did not say they had paid any rent.

In evidence is the Notice to End Tenancy for unpaid rent, proof of service, a monetary order request, registered mail receipt, some emails and a copy of the returned cheque.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Section 46 of the Act provides a landlord may end a tenancy if there is unpaid rent. The tenant has 5 days to either pay the rent in full or file an Application to Dispute it. Although the tenant disputed the Notice late, I find they have not paid any of the rent or provided sufficient reason in their Dispute to have the Notice to End Tenancy cancelled. I find the tenancy ended on March 28, 2017 and the landlord is entitled to an Order of Possession.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving the tenant owes rent for March and April 2017 for a total of \$5100. I find they also owe the \$100 move-in fee imposed by the strata as they stated in their own documents that they had moved boxes in. I find the landlord also entitled to recover the NSF fee of \$5 charged by their bank for the NSF cheques given to the landlord by the tenant.

As explained to the landlord in the hearing, I decline to award loss of rent for May 2017 as that is a future loss and the landlord may be able to re-rent the unit in May. This is a fixed term lease and the tenant remains responsible for the rent but the landlord has a duty to mitigate losses by diligently attempting to re-rent as soon as possible after the

tenant vacates. I give the landlord leave to reapply for further rental losses and other damages.

I dismiss the Application of the tenant.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application. I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order as calculated below. I find the landlord entitled to recover filing fees also. I give the landlord leave to reapply for further rental losses and other damages.

Calculation of Monetary Award:

Rental Arrears (2x\$2550) March and April 2017	5100.00
Strata move in fee	100.00
NSF fee to bank	5.00
Filing fee	100.00
<b>Total Monetary Order to Landlord</b>	<b>5305.00</b>

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 27, 2017

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Residential Tenancy Branch