



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, FF

### Introduction

Dispute Codes OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 27, 2017 (the "Notice") and to recover the filing fee for the Application.

Only the Landlord's agent appeared at the hearing gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's agent testified he served the Tenant with the Notice of Hearing and the Application on December 22, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 27, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's agent's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified that the tenancy began six or seven months ago. He stated that monthly rent is \$1600.00 and the Tenant failed to pay a security deposit.

The Tenant failed to pay rent for the months June 2017, July 2017, August 2017, September 2017, October 2017 and November 2017. As a result, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 27, indicating the amount of \$8,000.00 was due as of November 1, 2017 (the "Notice").

Based on the testimony of the Landlord's agent, I find that the Tenant was personally served with the Notice on by November 27, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, December 1, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord's Agent confirmed that the Tenant did not pay the outstanding rent nor did she apply for dispute resolution. The Landlord's Agent confirmed that the Tenant also failed to pay rent for November 2017, December 2017 and January 2018 such that the sum of \$12,800.00 is owed for rent.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I award the Landlord recovery of the \$100.00 filing fee. I grant the Landlord an Order under section 67 for \$100.00 . This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

The Landlord failed to apply for monetary compensation for unpaid rent; I therefore grant him leave to reapply for further monetary compensation.

#### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the filing fee.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 19, 2018

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Residential Tenancy Branch