



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPL, MNR, CNC, LRE,

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("the Act"). The matter was set for a conference call hearing.

The Landlord applied requesting an order possession and a monetary order for unpaid rent or utilities.

The Tenant applied to cancel a notice to end tenancy for cause and for an order to restrict the Landlords right to enter the rental unit.

The Landlord attended the hearing; however the Tenant did not. The Landlord testified that she sent the Notice of Hearing to the Tenant using registered mail sent to the dispute address on December 9, 2017. The Landlord provided a copy of the registered mail receipt number as proof of service. I find that the Tenant was served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided with an opportunity to ask questions about the hearing process and was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The Tenant applied to dispute a notice to end tenancy but failed to appear at the hearing. The Tenant's application is dismissed without leave to reapply.

During the hearing, the Landlord asked to amend her application to be able to retain the security deposit in partial satisfaction of her claim for unpaid rent.

### Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The Landlord testified that the tenancy commenced on September 1, 2017, as a month to month tenancy. Rent in the amount of \$950.00 was due to be paid on the first day of each month. A security deposit of \$500.00 was paid to the Landlord. A copy of the tenancy agreement was provided into evidence.

### Landlord's Application

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for November 2017. The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") on the Tenant by posting it to the Tenant's door on November 2, 2017. The Landlord provided a proof of service document in support of her testimony.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice states that the Tenant has failed to pay rent in the amount of \$950.00.

The Landlord testified that the Tenant did not pay the rent owing within 5 days of receiving the 10 Day Notice. The Landlord testified that she has not received any rent from the Tenant.

The Landlord testified that the Tenant did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord testified that she has not been served any documents from the Tenant for a dispute of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord requests an order of possession for the rental unit.

The Landlord is also seeking a monetary order for unpaid rent for November 2017, in the amount of \$950.00. The Landlord has requested to keep the security deposit in partial satisfaction of the unpaid rent.

### Analysis

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement whether or not a landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice. If a Tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice and did not pay the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$950.00 for unpaid November 2017, rent.

I find it is reasonable to permit the Landlord to amend the application to include a request to keep the security deposit. I order that the Landlord can keep the security deposit in the amount of \$500.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1050.00 comprised of \$950.00 in unpaid rent for November 2017, and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$500.00 towards the claim of \$1,050.00, I find that the Landlord is entitled to a monetary order in the amount of \$550.00. This

monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended due to non-payment of rent, there is no need to consider the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 26, 2017.

### Conclusion

The Tenant failed to attend the hearing, and did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, or pay the rent owing under the tenancy agreement within 5 days of receiving the Notice.

The Landlord is granted an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant.

The Landlord is granted a monetary order in the amount of \$550.00.

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: January 04, 2018

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Residential Tenancy Branch