



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNR, MNSD

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that she sent the hearing package to each tenant via registered mail on November 2, 2017. The landlord orally provided the registered mail tracking numbers as proof of service. A search of the tracking numbers showed that the registered mail was unclaimed. I noted that the address for the rental unit was the same as the landlord's address. The landlord explained the tenants occupy a coach house on the property and the landlord resides in the main house. The landlord testified that when she received the notice cards for the registered mail in the community mailbox she personally delivered them to the male tenant. In response, he did not say anything to her and just slammed the door. Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. I was satisfied the landlord complied with the service requirements of section 89 of the Act and I deemed the tenants to be sufficiently served pursuant to section 90 of the Act. Therefore, I continued to hear from the landlord without the tenants present.

I amended the Application for Dispute Resolution, with consent, to reflect the rental unit as being the "coach house".

During the hearing, the landlord stated that the loss of rent has increased since filing the application as the tenants continue to occupy the rental unit without paying any monies for continued use and occupation of the rental unit. The landlord stated she is most concerned about regaining possession of the rental unit as soon as possible. The landlord withdrew her request for a Monetary Order, and only seeks authorization to retain any security deposit the tenants may have paid. I amended the application accordingly.

During the hearing I noted that I had not received a copy of the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord orally described the content of the 10 Day Notice to me during the hearing and I ordered the landlord to upload a copy of it to the Residential Tenancy Branch service portal. Both pages of a 10 Day Notice were uploaded shortly by the landlord after the teleconference call ended..

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord authorized to retain the tenant's security deposit, if there was one paid?

### Background and Evidence

The landlord testified that the tenants and the previous owner of the property formed a tenancy agreement and the landlord inherited these tenants when she purchased the property. The landlord stated she was not provided a written tenancy agreement by the former owner. Nor, does the landlord recall receiving a security deposit from the former owner. Nevertheless, the landlord stated that the rent was set at \$950.00 payable on the first day of every month.

The landlord testified that for the month of September 2017 the tenants only paid \$900.00 toward rent and paid nothing for October 2017. On October 16, 2017 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The tenants did not pay the outstanding rent or file to dispute the 10 Day Notice. Nor, have the tenants paid any monies for use and occupation of the rental unit for the months of November 2017, December 2017 or January 2018 yet they continue to occupy the rental unit.

The 10 Day Notice to End Tenancy for Unpaid Rent that was provided to me indicates rent of \$950.00 was outstanding as of October 1, 2017. It indicates it was posted on the door on October 16, 2017. The effective date reads October 16, 2017 although it would appear the landlord transposed the spaces for the effective date and the date of signature. The space for providing the date of signature reads October 26, 2017.

The landlord seeks an Order of Possession as soon as possible. If the tenants had paid a security deposit the landlord seeks authorization to retain it in satisfaction of the unpaid rent.

#### 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 issue 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 tenants were required to pay rent of \$950.00 on the first day of every month and they failed to pay all of the rent for September 2017 and no rent for October 2017. I am satisfied that the landlord posted a 10 Day Notice that is in the approved form on the door of the rental unit on October 16, 2017. Although it appears the landlord erred in entering dates on the 10 Day Notice in the correct spaces, I find the errors are not so significant to invalidate the 10 Day notice since an incorrect effective date automatically changes to comply with the Act, as provided under section 53 of the Act.

Under section 90 of the Act, the 10 Day Notice is deemed to be received by the tenants three days after it was posted on the door, which means they were deemed to be in receipt of the 10 Day Notice on October 19, 2017. Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended 10 days later on October 29, 2017. Accordingly, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord an Order of Possession effective two (2) days after service upon the tenants.

Considering the landlord has not received any rent from the tenants for several months, I authorize the landlord to retain the tenant's security deposit, if one was paid, as requested.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the tenant's security deposit, if one was paid.

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