



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FF

### Introduction

On November 20, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenant attended the teleconference hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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.

### Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord provided documentary evidence that the tenancy began in October, 2006. Rent in the amount of \$1,137.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$439.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent for the month of November 2017, when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 6, 2017, ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the Notice in person on November 7, 2017.

The Notice states that the Tenant has failed to pay rent in the amount of \$590.32 which was due on November 1, 2017. 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.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant's roommate paid the outstanding amount of rent owing on November 23, 2017. The Landlord testified that she received a cheque from the government in the mail on November 23, 2017, for the amount of \$568.50. The Landlord provided a copy of a resident ledger showing the dates the rent was received by the Landlord. The Landlord submitted that she has an up to date ledger which shows the date the outstanding rent payment was received. The Landlord stated she would send the document to the Residential Tenancy Branch ("the RTB") immediately after the hearing.

The Landlord is no longer seeking a monetary order for unpaid rent, but wishes to receive an order of possession for the rental unit because the rent was not paid within 5 days of the Tenant receiving the 10 Day Notice.

The Landlord stated that she is in agreement that the Tenant can stay until the end of the month and requests that the order of possession be effective for February 28, 2018.

The Tenant acknowledged that he received the 10 Day Notice from the Landlord. The Tenant testified that he paid his portion of the rent; however his roommate needed to make arrangements for his/ her portion of the rent to be paid. The Tenant testified that he believes that the Ministry mailed the rent cheque to the Landlord on November 3, 2017. He submitted that he believes the Landlord received the rent cheque within five days of the date he received the 10 Day Notice.

On this date, the RTB received an email from the Landlord containing an up to date ledger showing that the outstanding rent payment was received by the Landlord on November 23, 2017.

### Analysis

Payment of rent is a material term of a tenancy. Section 26 of the Act provides that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. Non-payment of rent is considered a fundamental breach of a tenancy agreement.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the tenancy agreement requires the rent to be paid by the first day of each month.

I accept the Landlord's testimony and evidence that the outstanding rent for November 2017, was not paid until November 23, 2017. I find that the Tenant fundamentally breached the tenancy agreement. I find that the Tenant 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.

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 order that the Landlord can keep \$100.00 from the security deposit in satisfaction of the cost of the application.

### Conclusion

The Tenant failed to pay the rent when it was due under the tenancy agreement and did not pay all the rent due within five days of receiving the 10 Day Notice. In addition, the Tenant did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on February 28, 2018, after service on 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: February 08, 2018

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Residential Tenancy Branch