



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR CNR CNC OPR LRE DRI FF

### **Introduction:**

Both parties made Application and both attended the hearing and gave sworn testimony. The tenant confirmed receipt of the Notices to End Tenancy dated December 27, 2017 (one month for cause) and January 2, 2018 (ten days for unpaid rent). The landlord supplied tracking information to show he served his Application and evidence by registered mail. The postal information shows notices were left and it was available for pick up from January 17, 2018 but the tenant did not pick it up. He said he never saw the notice. The tenant said he served his Application for Dispute Resolution in the front door of the landlord and the landlord agreed he received it. I find the documents were legally or sufficiently served pursuant to sections 88 and 89 and 71(2) 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;
- b) An Order of Possession pursuant to sections 46 or 47 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This tenant applies pursuant to the Act for orders as follows:

- e) To cancel Notices to End Tenancy for unpaid rent and cause;
- f) To dispute an additional rent increase;
- g) To set limits on the landlord's entry into his unit; and
- h) Compensation for overpayment of rent.

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

Is the landlord entitled to an Order of Possession and a monetary order for rent arrears and filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that there was an illegal increase of rent and the landlord is illegally entering his unit?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 6, 2016, that rent was \$525 a month inclusive of utilities and a security deposit of \$260 was paid. It is undisputed that the tenant has not paid rent for January or February 2018 but he made an

Application on January 2, 2018 to cancel the Notice to End Tenancy for unpaid rent and to cancel the Notice to End Tenancy for cause.

The landlord said \$543 rent was owed for January when he served the 10 Day Notice and it has never been paid. He requests an Order of Possession and a monetary order for unpaid rent for January and February 2018 plus \$25 late fee for January.

The tenant said he had rent for January but the landlord did not pick it up. The landlord said the tenant texted him (text in evidence) that he did not have the full rent but could give it on January 6, 2018. The landlord did not come on January 1, 2018 since it was not the full rent and the tenant did not give him the rent on January 6, 2018.

The tenant said he had had an illegal rent increase in 2017. The landlord stated the rent was increased 3.7% with the requisite 3 months Notice of Rent Increase. The legal increase was calculated in the hearing as \$19.42 and the landlord had only increased the rent by \$18 a month so it was less than the legal increase.

The tenant and landlord agreed that the landlord never entered the tenant's own room without legal notice. There are a number of tenants and they share the kitchen and common areas. The landlord said he often meets with various tenants in the kitchen but his lease specifically says these are common areas and notice is not required.

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

**Analysis:**

Order of Possession:

Section 26 of the Act provides that a tenant must pay rent on time. Although the tenant disputed the 10 Day Notice to End Tenancy for unpaid rent, I find he never paid the rent for January or February 2018. I dismiss his Application to cancel the 10 Day Notice to End Tenancy. Section 55 of the Act entitles a landlord to an Order of Possession in these circumstances. The landlord agreed to an effective date of February 28, 2018 for the Order of Possession and the tenant agreed to allow the landlord to show the room to prospective tenants this Saturday and Sunday (February 24 and 25) between 1 and 2 p.m. without further notice.

Monetary Order:

I find the landlord entitled to a monetary order for \$1111.00 (\$543 x2 +\$25 late fee) and to recover his filing fee.

Regarding the tenant's application, I find the weight of the evidence is that his rent increase was legal in 2017 and the landlord is not entering his unit illegally. I find the kitchen and other areas shared by all the tenants are common areas and the landlord has a right to enter these areas as set out in the lease.

As the landlord has received an Order of Possession based on the 10 Day Notice to End Tenancy, I find it irrelevant to consider the One Month Notice to End Tenancy.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. His filing fee was waived.

I find the landlord entitled to an Order of Possession effective February 28, 2018 as agreed and a monetary order as calculated below. I find he is entitled to recover filing fees for his application and to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Unpaid rent Jan., Feb. 2018 (2x\$543) plus \$25 late fee	1111.00
Filing fee	100.00
Less security deposit	-260.00
<b>Total Monetary Order to Landlord</b>	<b>951.00</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: February 21, 2018

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Residential Tenancy Branch