



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

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 8, 2017 (the “Notice”) and to recover the filing fee for the Application.

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

S.G. testified she served the Tenant with the Notice of Hearing and the Application on November 30, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 5, 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/Tenant'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 and monetary relief?
2. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed February 2, 2017 which provided as follows: the tenancy began February 22, 2017; monthly rent was payable in the amount of \$1,500.00 in addition to a \$65.00 monthly charge for parking; and the Tenant paid as security deposit in the amount of \$750.00.

The Tenant failed to pay rent for the month of November 2017. As a result, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 8, 2017 indicating the amount of \$1,565.00 was due as of November 1, 2017 (the "Notice").

Based on the testimony of S.G., I find that the Tenant was served with the Notice on November 8, 2017 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of November 11, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 16, 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.

S.G. testified that the Tenant did not pay the outstanding rent by November 16, 2017, nor did he make an application for dispute resolution.

S.G. further testified that the Tenant has made some payments, for which he has received receipts marked "for use and occupancy only", and that as of the date of the

hearing the amount owing from the Tenant to the Landlord is \$2,845.00 including amounts for rent, parking and N.S.F. fees (which are authorized pursuant to paragraph 10 of the residential tenancy agreement.)

### Analysis

Based on the Landlord's undisputed 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 within the strict 5 day deadline imposed by section 46 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 also find that the Landlord has established a total monetary claim of \$2,945.00 comprised of \$2,845.00 claimed for unpaid rent and parking, N.S.F. fees, and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord an Order under section 67 for the balance due of \$2,945.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

### 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

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: February 13, 2018

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Residential Tenancy Branch