



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit address via registered mail on January 12, 2018. The landlord testified that the tenant continued to reside in the rental unit until February 28, 2018 but the registered mail was unclaimed. 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 sent the hearing documents to the tenant in a manner that complies with section 89 of the Act and I deemed the tenant to be served with the documents on January 17, 2018 pursuant to section 90. Accordingly, I continued to hear from the landlord without the tenant present.

The landlord confirmed that an Order of Possession is no longer required since the tenant has vacated the rental unit. Accordingly, I do not provide one with this decision.

### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and loss of rent for the tenant in the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy started on March 1, 2017 for a one year fixed term set to expire on February 28, 2018. The tenant paid a security deposit of \$187.50. The tenant was required to pay rent of \$350.00 on the first day of every month.

The tenant failed to pay rent for December 2017 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$350.00 was outstanding as of December 1, 2017 and a stated effective date of December 13, 2017. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The tenant continued to occupy the rental unit until February 28, 2018 and did not pay any monies for use and occupancy of the unit for the months of January 2018 or February 2018.

The landlord seeks to recover from the tenant unpaid and loss of rent in the amount of \$350.00 per month for the months of December 2017; January 2018; and, February 2018.

The landlord provided a copy of the tenant's ledger; the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; and, the tenancy agreement as documentary evidence. The landlord pointed out that the ledger indicates the tenant failed to pay rent for October 2017; however, the tenant was not required to pay rent for the month of October 2017 due to a flood in the unit.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I accept the unopposed evidence before me that the tenant was required to pay rent for December 2017 in the amount of \$350.00 and she failed to do so.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. Upon receipt of a 10 Day Notice the tenant is required to pay the outstanding rent or dispute the 10 Day Notice within five days. Otherwise, the tenant is required to vacate the rental unit by the effective date of the 10 Day Notice. The tenant failed to comply with any of these obligations and continued to occupy the rental unit until February 28, 2018. Therefore, I am satisfied that the tenant's actions caused the landlord to suffer further loss of rent for the months of January 2018 and

February 2018 and I grant the landlord's request to recover loss of rent from the tenant for these months.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Rent: December 2017 through February 2018	\$1,050.00
Filing fee	100.00
Less: security deposit	<u>(187.50)</u>
Monetary Order	\$ 962.50

### Conclusion

The landlord is authorized to retain the security deposit and the landlord is provided a Monetary Order for the balance of \$962.50 to serve and enforce upon 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: March 08, 2018

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Residential Tenancy Branch