



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      FFL MNRL MNRL-S OPR  
                                 MT CNR

### Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy, and for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. Therefore, I dismiss the tenant's application in its entirety without leave to reapply.

The landlord testified that she personally served the tenant with the Landlord's Application for Dispute Resolution and notice of this hearing (the Hearing Package) on January 16, 2018. I accept that testimony and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on September 15, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$835.00 per month is payable on the 1<sup>st</sup> day of each month, and the tenant paid a pro-rated amount for the first partial month of the tenancy. The landlord collected a security deposit from the tenant in the amount of \$417.50 at the outset of the tenancy which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 70 units.

The tenant failed to pay rent when it was due in January, 2018, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on January 2, 2018. A copy has been provided as evidence for this hearing, and it is dated January 2, 2018 and contains an effective date of vacancy of January 12, 2018 for unpaid rent in the amount of \$835.00 that was due on January 1, 2018. Despite many promises, the tenant has still not paid the rent and has not paid any rent for February or March, 2018.

The landlord seeks an Order of Possession, a monetary order for the unpaid rent totaling \$2,505.00, an order permitting the landlord to keep the \$417.50 security deposit and to recover the \$100.00 filing fee from the tenant.

### Analysis

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. However, where a document is served by posting it to the door of the rental unit, it is deemed to have been served 3 days later. The effective date of vacancy cannot be earlier than 10 days after deemed service of January 5, 2018, or January 15, 2018. Since that date has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant has not paid any rent for the months of January, February and March, 2018, and I find that the landlord has established a monetary claim as against the tenant in the amount of \$2,505.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$417.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,187.50 ( $\$835.00 \times 3 = \$2,505.000 + \$100.00 - \$417.50 = \$2,187.50$ ).

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$417.50 security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,187.50.

This order is final and binding and may be enforced.

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 13, 2018

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Residential Tenancy Branch