



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, PSF, LRE, CNR, OPR, MNR, MNSD

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and, other remedies. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and loss of rent; and, authorization to retain the security deposit. The landlord and her agent were at the hearing; however, there was no appearance on part of the tenant(s) despite leaving the teleconference call open for at least 15 minutes.

I noted that on the tenant's Application for Dispute Resolution only one tenant is named; whereas, the landlord named two tenants on the landlord's Application for Dispute Resolution, referred to by initials JG and DH. The tenancy agreement provided to me names two tenants on the first page of the agreement but only JG signed the agreement. While DH may be an occupant of the rental unit, I am unsatisfied that DH had privity of contract and was bound by the terms of the tenancy agreement. Therefore, I amend the landlord's Application for Dispute Resolution to exclude DH as a party to this dispute.

The landlord's agent confirmed receipt of the tenant's Application for Dispute Resolution. Since the tenant did not appear at the hearing, I dismissed the tenant's application without leave to reapply.

The landlord's agent testified that the landlord's hearing package was sent to the tenant via registered mail on March 5, 2018 and the registered mail package was unclaimed. The landlord's agent also testified that on March 24, 2018 the landlord's agent personally served JG with another copy of the landlord's Application for Dispute Resolution.

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 that JG has been deemed served with the landlord's hearing documents pursuant to section 90 and in receipt of the landlord's Application for Dispute Resolution on March 24, 2018 when served upon him in person. Therefore, I continued to hear from the landlord and her agent without the tenant present.

The landlord's agent pointed out that there was a typographical error in the landlord's monetary claim and that it should be amended to reflect monthly rent of \$500.00 per month, not \$550.00. I amended the claim accordingly since it is beneficial to the tenant to do so.

I also amended the applications to reflect the rental unit as being unit: BSMT 1 as identified on the 10 Day Notice and the tenancy agreement before me. I noted that neither the tenant nor the landlord had indicated the rental unit was a basement suite on the property on their respective Applications for Dispute Resolution but that enforcement of the Order of Possession may require the unit to be identifiable from other units on the property.

#### Issue(s) to be decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

#### Background and Evidence

The month to month tenancy started on August 17, 2017 and the landlord collected a security deposit of \$250.00. The tenant was required to pay rent of \$500.00 on the first day of every month. The tenant failed to pay rent for the months of December 2017 through February 2018 and on February 3, 2018 the landlord's agent sent a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant via registered mail. The 10 Day Notice was delivered on February 7, 2018. The tenant failed to dispute the 10 Day Notice but I have dismissed the tenant's application to cancel the 10 Day Notice due to his failure to appear at the hearing.

Upon review of the 10 Day Notice, I noted that it is in the approved form and appears to be duly completed. The 10 Day Notice indicates that rent of \$1,500.00 was outstanding as of February 1, 2018 and has a stated effective date of February 12, 2018.

The landlord and her agent testified that the outstanding rent was not paid despite serving the tenant with the 10 Day Notice. The landlord also testified that no monies have been received for March 2018 and April 2018 yet the tenant continues to occupy the rental unit.

The landlord seeks an Order of Possession effective as soon as possible. The landlord seeks a Monetary Order to recover the unpaid and/or loss of rent for the months of December 2017 through April 2018; and, authorization to retain the security deposit.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. The tenant failed to dispute the 10 Day Notice on February 16, 2018 which is after the deadline for doing so, and I have dismissed the tenant's request due to his failure to appear at the hearing. The tenant did not provide evidence that the outstanding rent was paid and the landlord confirmed that the tenant did not pay the outstanding rent.

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice provided to me by both the landlord and the tenant, I am satisfied that it meets the form and content requirements for a 10 Day Notice. Although the stated effective date is incorrect, an incorrect effective date does not invalidate the Notice. Rather, section 53 of the Act provides that the effective date automatically complies. Since the 10 Day Notice was delivered on February 7, 2018 the effective date should read February 17, 2018.

Having been satisfied that the 10 Day Notice otherwise complies with the Act and the tenant's application that I cancel the 10 Day Notice has been dismissed, I provide the landlord with an Order of Possession pursuant to section 55(1) of the Act. Since the effective date of the 10 Day Notice has long since passed and the tenant has not paid any monies for use and occupation, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

As for the landlord's monetary claim, I accept the unopposed evidence before me that the tenant has failed to pay any rent for the months of December 2017 through February 2018 in the amount of \$500.00 for each month. Accordingly, I award the landlord unpaid rent of \$1,500.00.

I also accept the unopposed evidence before me that the tenant has remained in occupation of the rental unit and the landlord has suffered further loss of rent for the months of March 2018 and April 2018. Therefore, I further award the landlord loss of rent of \$1,000.00.

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 the landlord's Application for Dispute Resolution.

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

Unpaid Rent: December 2017 - February 2018	\$1,500.00
Loss of Rent: March 2018 and April 2018	1,000.00
Filing fee	100.00
Less: security deposit	<u>(250.00)</u>
Monetary Order	\$2,350.00

### Conclusion

The tenant's application has been dismissed without leave to reapply.

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,350.00 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: April 25, 2018

---

Residential Tenancy Branch