



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL – S, MNDCL -S, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated February 26, 2020; a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

As for service of the landlord's hearing documents, the landlord's agent gave affirmed testimony that he is a process server and he personally placed the hearing package on the door of the rental unit on July 17, 2020. The tenant denied receiving a hearing package on the door.

The landlord's agent testified the hearing package was also sent to the tenant's mailing address, that appears on the tenancy agreement. The agent provided a registered mail tracking number and a search of the tracking number shows the registered mail was delivered on July 31, 2020. The tenant confirmed he received registered mail sent to his mailing address, which is his mother's house, but claimed he received it from her house only four days before the hearing. The tenant stated he did not have enough time to gather and submit his evidence. I asked the tenant to describe the evidence he would gather if he were given more time to do so. The tenant stated he would submit a letter prepared by his friend that described an attempt to pay the outstanding rent and evidence concerning an assault by the landlord. I informed the parties that I was satisfied the tenant was duly served with notification of this proceeding and I would proceed; however, with a view to fairness to the tenant, I permitted the tenant to read the letter into evidence. I found the assault not relevant to the matter at hand, which is payment of rent and receipt of a 10 Day Notice after the alleged assault. I did not further consider adjourning the proceeding.

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, and if so, the amount?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord submitted a written tenancy agreement that provides the tenancy started on September 30, 2016; the tenant is required to pay rent of \$850.00 on the first day of every month; and, the tenant paid a security deposit of \$425.00.

The tenant testified that his tenancy started in 2015 or 2016 and his monthly rent was originally \$625.00 and increased to \$850.00 approximately one year ago. The tenant testified he paid a security deposit of \$310.00.

The landlord testified the tenant did not pay any rent that was due on February 1, 2020. The tenant testified that he paid \$425.00 in cash, as he usually did, for the month of February 2020 and did not receive any receipt for the cash payment from the landlord. The landlord confirmed the tenant ordinarily paid rent in cash and the landlord did not issue receipts to the tenant.

The tenant explained that he only paid one-half of the rent for February 2020 because the landlord wanted him to move out on February 15, 2020 so the landlord's family members may move in; but, then the tenant was assaulted by the landlord on February 13, 2020 and the tenant did not move out.

The landlord submitted that he posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on February 26, 2020 ("10 Day Notice"). The 10 Day Notice indicates the tenant failed to pay \$850.00 that was due on February 1, 2020 and has a stated effective date of March 8, 2020. The landlord testified that the tenant did not pay or attempt to pay the rent for February 2020 or any subsequent month's rent after the 10 Day Notice was served.

The tenant stated he was in jail until March 4, 2020 but that his friend went to the landlord to pay the tenant's outstanding rent for February 2020 and March 2020 rent on March 4, 2020 after going to his bank to withdraw the funds but the landlord rejected the

attempted payment and indicated he did not want to accept payment and continue the tenancy. The tenant read into evidence the letter purportedly written by his friend. I noted the letter does not indicate how much money the friend took to the landlord.

The tenant filed to dispute the 10 Day Notice on March 6, 2020 and requested an extension of time to file the dispute on the basis the tenant was in jail until March 4, 2020 (file number recorded on the cover page of this decision). In filing the Application for Dispute Resolution, the tenant indicated he had paid \$300.00 in rent for February 2020. The tenant had provided the letter written by his friend as evidence for that proceeding; however, the letter was not accompanied by corroborating evidence such as the banking transaction receipt. The hearing was scheduled to take place on April 24, 2020 and on that date there was no attendance by either party, nor did any body appear on their behalf. The tenant's Application for Dispute Resolution was dismissed, with leave, but any relevant time limits were not extended.

At the hearing of this date, the tenant testified he did not appear for the April 24, 2020 hearing because he was in jail. The tenant did not send an agent on his behalf on April 24, 2020; the tenant did not reapply to dispute the 10 Day Notice; and, the tenant did not file a Application for Review Consideration and provide evidence that circumstances beyond his control that were not anticipated prevented him from attending the April 24, 2020 hearing.

The tenant acknowledged that he did not pay or attempt to pay rent for the months of April 2020 onwards and he continues to occupy the rental unit.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice; a signed authorization for the landlord's agent; and, the registered mail receipt for service of the landlord's proceeding package.

### 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 find the landlord's submission concerning the terms of tenancy supported by the signed tenancy agreement provided as evidence. The tenant also acknowledged he has been required to pay rent of \$850.00 on the first day of every month for the past

year or so. As such, I accept the tenant was required to pay rent of \$850.00 on the first day of every month.

The tenant acknowledged he made only a partial payment of rent for February 2020. The Act provides very specific and limited circumstances when a tenant may legally withhold rent. I find I was not provided any evidence to suggest the tenant had a lawful right, as provided under the specific and limited provisions of the Act, to withhold rent from the landlord. Although the tenant asserted he paid a partial payment for February 2020 on the basis he was expected to move out of the rental unit in mid-February 2020, the tenant did not move out in February 2020. The tenant also alleged the landlord assaulted him in February 2020; however, an assault or other breach of quiet enjoyment is not a basis to withhold rent unless an Arbitrator has authorized the tenant to do so, and the tenant has not received such authorization from an Arbitrator.

Where a tenant does not pay rent that is due, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

Section 55 of the Act provides the circumstances when a landlord will be provided an Order of Possession. Under section 55(2)(b), the Act provides:

- (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
  - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

The tenant claims his friend attempted to pay rent on his behalf on March 4, 2020 but the letter purportedly written by his friend did not specify the amount and was not accompanied by banking records to corroborate his statements. In any event, the tenant failed to dispute the 10 Day Notice dated February 26, 2020, and a request for an extension of time to file the dispute, on March 6, 2020 and a hearing was scheduled for April 24, 2020. The time to present a basis for cancelling the 10 Day Notice was at the

April 24, 2020 hearing; however, the tenant did not appear at the hearing. Although the tenant claims to have been in jail on April 24, 2020, the tenant could have had an agent attend the April 24, 2020 hearing, and either represent the tenant or request an adjournment. The tenant did not file an Application for Review Consideration and demonstrate he could not attend the hearing of April 24, 2020. The time limit to dispute the February 26, 2020 10 Day Notice and file an Application for Review Consideration have long since expired.

In light of the above, I find the tenant is without further remedy under the Act with respect to disputing the 10 Day Notice and I find the tenancy has ended pursuant to the 10 Day Notice. I give the tenant the benefit of the doubt that he received the 10 day Notice on March 4, 2020, as he claims, and the effective date of the 10 Day Notice changes to read March 14, 2020. Since the date of today's hearing is long past March 14, 2020 and the tenant continues to occupy the rental unit without paying rent, I provide the landlord with an Order of Possession effective two (2) days after service, as requested by the landlord's agent.

With respect to the landlord's monetary claim, the unopposed evidence satisfies me that the landlord has suffered loss of rent for all or part of February 2020 and the entire monthly amount for the months of March 2020 through August 2020 and I award the landlord recovery of rent for those months. With respect to the month of February 2020, the landlord submitted that no rent was received. The tenant testified that \$425.00 was paid during this hearing and he submitted that \$300.00 was paid in filing his Application for Dispute Resolution on March 6, 2020. The landlord did not produce a ledger or receipts to demonstrate the amounts paid by the tenant, even though a landlord is required to give receipts for cash payments under section 26(2) of the Act. Therefore, I give the benefit of the doubt to the tenant and I credit the tenant with paying \$425.00 for February 2020 and I award the landlord unpaid rent of \$425.00 for February 2020.

I further award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

The landlord's request to retain the security deposit in partial satisfaction of the unpaid and/or loss of rent is granted.

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent for February 2020	\$ 425.00
Unpaid rent March 2020 through August 2020	5100.00
Filing fee	100.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	\$5200.00

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of unpaid and/or loss of rent in the sum of \$5200.00 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: August 20, 2020

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Residential Tenancy Branch