



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the security deposit?

### Background and Evidence

The tenancy began on December 1, 2016. Rent in the amount of \$1,260.00.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant

The landlord testified that the tenant was served on August 3, 2022, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on August 3, 2022, with an effective date of August 15, 2022. The landlord stated that the tenant did not pay the rent or dispute the Notice within 5 days.

The landlord testified that they are not seeking a monetary order as the tenant paid the outstanding rent on August 25, 2022; however, they are seeking an order of possession.

The tenant acknowledged that they received the Notice. The tenant stated that they informed the landlord that they would pay the outstanding rent; however, it would not be within the 5 days as it was impossible. The tenant acknowledged that they did not dispute the Notice as they have a difficult time reading.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant acknowledged that they received the Notice. While I accept the tenant may have difficulties reading; however, if the tenant did not understand the Notice at the time it was received it was their responsibility to seek assistance. Further, the tenant clearly knew that the Notice stated that rent had to be paid within 5 days.

I find the tenant breached the Act when they failed to pay rent on the day it is due under the terms of their tenancy agreement. The tenant did not pay the outstanding rent within 5 days and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on August 15, 2022.

Although the landlord would be entitled to an order of possession, effective 2 days after service upon the tenant as the tenancy has legally ended; however, as the landlord has accepted occupancy rent for October 2022. I find it reasonable to extend the effective date of the order of possession to **October 31, 2022, at 1:00PM** as that is the last date of which occupancy rent has been paid. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As the landlord no longer requires a monetary order for the unpaid rent as it was paid after the effective date in the Notice. I dismiss this portion of the landlord's claim.

As the landlord was successful with their application, I find the landlord is entitled to recover the cost of the filing fee in the amount of \$100.00. I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the claim.

### Conclusion

The tenant failed to pay rent within 5 days after receiving the Notice 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 landlords are granted an order of possession. The landlords are authorized to retain \$100.00 from the tenant's security deposit in full satisfaction to recover the cost of the filing fee.

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: October 04, 2022

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Residential Tenancy Branch