



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **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 based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on January 2, 2023, for an order of possession based on the vacate clause within the tenancy agreement, for a monetary order for unpaid rent or utilities, for a monetary order for damages to the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

The landlord’s agent and legal counsel attended, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Legal Counsel stated that the tenant was served by registered mail sent on April 13, 2023. A Canada Post tracking number was provided as evidence. The Canada Post show the tenant did not pickup the package and it was returned to the landlord. I find the tenant was duly served in accordance with the Act. Refusal or neglect to pickup the package does not override the deemed service provisions of the Act.

At the outs set of the hearing it was determined that IM is not a tenant. IM is the child of the tenant KM and IM did not sign the tenancy agreement. I have removed IM from the style of cause as a child, whom is not a tenant has no rights or obligation under the Act.

In this case, I have not considered the landlord’s claim for damages to the rental unit as the tenancy has not ended and is premature. The landlord has leave to reapply once the tenant ha vacated.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on September 1, 2022. Rent in the amount of \$2,500.00 was payable on the first of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,000.00 was to be paid by the tenant. The tenant only paid \$500.00 towards the pet damage deposit.

The landlord testified that the tenant did not pay rent for January 2023 and was served with the Notice, by personal service, on January 2, 2023, which the tenant signed the document. Filed in evidence is a copy of the Notice, which shows the tenant had failed to pay rent of \$2,500.00.

The landlord testified that the tenant did not pay the outstanding rent within 5 days or dispute the Notice. The landlord stated that the tenant has not paid any rent for 5 months from January to May 2023 and owes \$12,500.00.

The landlord seeks an order of possession and a monetary order for rent owed.

### Analysis

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

I find that the tenant was served with the Notice on January 2, 2023, by personal service. The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the Notice.

The tenant has not paid the outstanding rent 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 the January 10, 2023, as that date was automatically corrected under the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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.

I find the tenant has failed to pay rent for 5 months, from January to May 2023, inclusive. I find that the landlord is owed **\$12,600.00** comprised of unpaid rent for the above months, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$1,250.00 and the pet damage deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$10,850.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have ended the tenancy based on failure to pay rent and have issued an order of possession. I find I do not need to consider the vacate clause within the tenancy for an order of possession.

### Conclusion

The tenant failed to pay rent 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 landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: May 19, 2023

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Residential Tenancy Branch