



# 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, 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.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on April 19, 2023. The landlord stated that the tenant did not pick up the package and it was returned unclaimed. A Canada Post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act. Refusal or neglect to pick up the package does not override the deemed served provisions of the Act.

The landlord 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.

### 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 in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on December 1, 2015. Rent in the amount of \$901.00 was payable on the first of each month. A security deposit of \$405.00 was paid by the tenant.

The landlord testified that the tenant was served on March 14, 2023, with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on the same day, by posting to the door of the rental unit. The landlord stated at the time the Notice was issued the tenant had failed to pay the amount of \$3,431.00 in rent. Filed in evidence is a copy of the rent ledger and the Notice.

The landlord testified that the tenant did not dispute the Notice or pay the outstanding rent within 5 days. The landlord stated that on March 20, 2023, they received from the tenant \$915.00, which reduced the outstanding rent to \$2,516.00.

The landlord stated that the tenant has failed to pay subsequent rent for April and May 2023, and the tenant currently owes \$4,318.00 in unpaid rent.

The landlord stated that they had spoken to the tenant a couple of weeks ago and they said they would come to pay the outstanding rent; however, the tenant has not made any effort to pay.

### Analysis

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

I find that the tenant was served with Notice on March 14, 2023, by posting to the door. 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 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 that the landlord has established a total monetary claim of **\$4,418.00** comprised of unpaid rent as stated above, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$405.00 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 **\$4,013.00**. 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.

### 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 30, 2023

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Residential Tenancy Branch