



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on March 3, 2023, for a monetary order for unpaid rent or utilities, 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 sent by registered mail sent on April 5, 2023, a Canada post tracking number was provided as evidence of service. The landlord stated that the tenant refused to accept the package and it was returned. The Canada post history shows it was refused by the tenant. I have noted the Canada post tracking number on the covering page of this decision.

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 to accept the package does not override the deem service provision of the Act. Nor is it ground for review.

The landlord appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and 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?

### Background and Evidence

The landlord testified that the tenant failed to pay rent for March 2023, in the amount of \$700.00 and was served with the Notice by posting to the door on March 3, 2023. Filed in evidence is a copy of the Notice that complies with section 52 of the Act.

The landlord testified that the tenant paid the outstanding rent for March and April 2023 on April 11, 2023, and the tenant was given a letter that they are not reinstating the tenancy.

The landlord testified that the tenant paid May 2023 rent on April 24, 2023, and another letter was given to the tenant that they were not reinstating the tenancy.

The landlord stated that they seek an order of possession and a monetary order for unpaid rent is not needed.

The landlord agreed that the tenant can remain until May 31, 2023, as they have accepted occupancy rent.

### Analysis

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

Based on the testimony of the landlord, I find that the tenant was served with the Notice on March 3, 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 did not pay the outstanding rent within 5 days as it was paid on April 11, 2023, 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.

As the landlord has accepted occupancy rent for May 2023, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **1:00 PM on May 31, 2023**, 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 is entitled to recover the cost of the filing fee in the amount of \$100.00. I authorize the landlord to keep \$100.00 from the security deposit if full satisfaction of this award.

### 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 landlord is granted an order of possession and may keep \$100.00 from the security deposit to recover the cost of the filing fee. 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 08, 2023

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Residential Tenancy Branch