



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent, loss of rent and late fees; and, authorization to retain the security deposit. Only the landlord appeared at the hearing.

I noted that the landlord had identified three respondent tenants in filing this application; however, the tenancy agreement provided as evidence was signed by only one tenant. Since the other two respondents do not have *privity of contract* I found that they are not tenants who are bound by the tenancy agreement. Rather, I considered them to be occupants of the rental unit. With consent of the landlord I excluded them as parties to this dispute and amended the application accordingly to identify the tenant as the person who signed the tenancy agreement.

The landlord provided a registered mail receipt, including tracking number, to prove that the landlord mailed a hearing package to the tenant at the rental unit address on November 2, 2015. The landlord testified that the registered mail package was successfully delivered. I was satisfied the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

### 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 rent, loss of rent and late fees?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one-year fixed term tenancy started June 5, 2015 and the landlord collected a security deposit of \$692.50. The tenant is required to pay rent of \$1,385.00 plus \$25.00 for parking on the first day of every month. The tenancy agreement also provides for late fees and NSF fees of \$25.00 each under clause 10.

The landlord provided a ledger of the tenant's account which shows that pre-authorized rent payments were returned in the months of July, August and September 2015, causing late fees and NSF fees to accrue. The tenant made partial payments toward amounts owed for those months but as of September 30, 2015 there was a balance owing of \$945.33. A payment was received from the tenant on October 1, 2015 in the amount of \$860.00 that the landlord applied toward the arrears.

On October 2, 2015 the landlord issued and posted a 10 Day Notice to End Tenancy for Unpaid Rent with a stated effective date of October 15, 2015 indicating the tenant failed to pay rent of \$1,385.00 for October 2015. The tenant did not file to dispute the 10 Day Notice but paid \$550.00 on October 6, 2015. The landlord issued a receipt indicating it was accepted as a partial payment for October 2015 rent and use and occupancy only.

The ledger provided to me and the tenant is dated November 2, 2015 and has a balance of \$2,380.33 including loss of rent and parking for November 2015.

The tenant continued to reside in the rental unit and on November 18, 2015 she presented a money order to the landlord in the amount of \$1,120.00 which the landlord accepted for use and occupancy only.

As of the date of this hearing, the landlord seeks a Monetary Order based upon the above-described ledger, less the payment received on November 18, 2015, plus loss of rent and parking for December 2015 and late fees for November and December 2015.

The landlord did want to recognize that this morning two post-dated cheques from the tenant were left in the landlord's office: one post-dated for December 31, 2015 in the amount of \$1,500.00 and one post-dated for January 5, 2016 in the amount of \$1,500.00. Since those cheques are not yet negotiable they are not reflected in the calculation of the Monetary Order requested.

The landlord considers this tenancy to be at an end as of October 15, 2015 pursuant to the 10 Day Notice and seeks an Order of Possession.

Documentary evidence provided by the landlord included: the tenancy agreement; the tenant's ledger as of November 2, 2015; receipt issued for the payment received on October 6, 2015; the 10 Day Notice; and, registered mail receipt.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent 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 Notice or the tenant has

five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 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 Notice.

I accept the undisputed evidence before me that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on October 2, 2015. According to section 90 of the Act, it is deemed to be received by the tenant three days later. As such, the tenant had until October 10, 2015 to either pay the outstanding rent or dispute the 10 Day Notice. The tenant did not file to dispute the 10 Day Notice and I proceed to consider whether she paid the outstanding rent.

Although the tenant made two payments to the landlord in early October 2015 I accept that it is common practice and lawful to apply payments to the oldest debts in the absence of any indication it is was for a specific debt. In this case, the landlord applied the \$860.00 payment of October 1, 2015 to the pre-existing debt of \$945.33. Then on October 2, 2015 the landlord issued the 10 Day Notice indicating rent full amount of rent was still outstanding for October 2015 which put the tenant on notice that the landlord required payment of that amount within five days. I find the landlord's demand for \$1,385.00 for October 2015 to be just and fair in the circumstances. Since the tenant only paid \$550.00 toward that amount within five days of receiving the 10 Day Notice I find that this tenancy legally came to an end as of October 15, 2015.

In light of the above, I grant the landlord's request for an Order of Possession. Provided to the landlord is an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession requires that the tenant, and all other occupants of the rental unit, vacate the rental unit.

With respect to the landlord's monetary claims, I have reviewed all of the evidence before me and I find as follows. I find the landlord amounts included in the ledger to be supported by the undisputed evidence and the tenancy agreement. According, I find the landlord entitled to recover unpaid and/or loss rent and parking, late fees and NSF fees that are reflected in the ledger dated November 2, 2015 with an adjustment of \$1,120.00 to reflect the partial payment made on November 18, 2015. Since the tenant has continued to occupy the rental unit I further award the landlord loss of rent and parking for December 2015. I deny the landlord's request for late fees for November and December 2015 as the late fees are payable under the tenancy agreement and the tenancy ended in October 2015.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Balance as per ledger dated November 2, 2015	\$2,380.33
Less: payment received November 18, 2015	(1,120.00)
Loss of Rent: December 2015	1,385.00
Loss of Parking Revenue: December 2015	25.00
Filing fee	50.00
Less: security deposit	<u>(692.50)</u>
Monetary Order	\$2,027.83

To enforce the Monetary Order it must be served upon the tenant and any outstanding balance may be pursued in Provincial Court (Small Claims) as an Order of the court.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after it is served upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,027.83 to serve and enforce as necessary.

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: December 30, 2015

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Residential Tenancy Branch

