



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord submitted a registered mail receipt, including tracking number, as evidence the hearing package was sent to the tenant on August 4, 2016. The landlord testified that the hearing package, including Amendment, was also personally served upon the tenant on September 1, 2016 at the rental unit. The landlord confirmed that the tenant has not yet vacated the rental unit. I was satisfied that the landlord served the tenant with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested that the application be amended to include authorization to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenant since such authorization would reduce any Monetary Order issued with this decision. The landlord also requested the application be amended to include loss of rent for the month of September 2016 since the tenant continues to occupy the rental unit. Since the tenant has had the benefit of continuing to occupy the rental unit I found this request for amendment reasonable and non-prejudicial to the tenant and I permitted the amendment.

### 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 and loss of rent for the months of July, August and September 2016?
3. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The tenancy commenced June 1, 2002 and the tenant paid a security deposit of \$387.50 on May 21, 2002. When the tenancy commenced the rent was set at \$775.00 payable on the first day of every month. Over the years the rent has increased a number of times by way of Notices of Rent Increase issued in 2007, 2010, 2011, 2012, 2013 and 2015. As indicated on the most recent Notice of Rent Increase, the current monthly rent is \$943.00

The landlord submitted that the tenant failed to pay rent for July 2016 and on July 18, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent was sent to the tenant via registered mail. The 10 Day Notice provides that the tenant failed to pay \$943.00 that was due on July 1, 2016 and has a stated effective date of July 28, 2016. The landlord provided the registered mail receipt, including tracking number, as proof of service.

Despite being served with the 10 Day Notice the tenant did not pay the outstanding rent and did not file an Application for Dispute Resolution to dispute the 10 Day Notice. Nor, did the tenant vacate the rental unit and the tenant has not paid any rent for the months of August 2016 or September 2016.

The landlord seeks an Order of Possession and to recover unpaid and/or loss of rent for the months of July 2016, August 2016 and September 2016 in the amount of \$2,829.00.

As evidence for this proceeding, the landlord provided copies of the tenancy agreement; Notices of Rent Increase; the 10 Day Notice; and registered mail receipts used to send the 10 Day Notice and the hearing package for this proceeding.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement and rent as legally increased in accordance with the Act. 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 unopposed evidence before me that the landlord sent a 10 Day Notice to the tenant via registered mail on July 18, 2016. As the 10 Day Notice was mailed to the tenant it is deemed to be received five days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and shall read August 2, 2016 pursuant to sections 46, 53 and 90 of the Act

I also accept the unopposed evidence before me that the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice. Accordingly, I find the tenancy ended on August 2, 2016 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent for July 2016 and August 2016 and since the tenant has continued to occupy the rental unit I further find the landlord entitled to recover loss of rent for the month of September 2016. The landlord has provided evidence to demonstrate the monthly rent is \$943.00 and I award the landlord unpaid and/or loss of rent in the sum of \$2,829.00 as requested.

Since the landlord was successful with this application, I further award the landlord recovery of the \$100.00 filing fee paid for this application

I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. The accrued interest for the security deposit is calculated to be \$13.72.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid or loss of rent: July 2016 - September 2016	\$2,829.00
Filing fee	100.00
Less: security deposit and interest	<u>(401.22)</u>
Monetary Order	\$2,527.78

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and interest in partial satisfaction of unpaid rent and has been provided a Monetary Order for the balance of \$2,527.78 to serve and enforce upon the tenant.

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: September 22, 2016

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Residential Tenancy Branch