



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRIPLE STAR HOLDINGS and ROCKWELL MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The sole tenant appearing at the hearing confirmed that she was also representing the other named tenant, her daughter, who was ill.

### Preliminary and Procedural Matters

At the commencement of the hearing, the tenant indicated that she and one of the building managers had reached into a mutually agreeable payment plan in satisfaction of the rental arrears. Accordingly, I explored whether a mutual agreement had been or could be reached in resolution of this application. The landlord's agent, who was the only agent at the commencement of the hearing, was unaware that there was a payment plan reached. I asked that the building manager be called to the hearing. The agent put in a message for the building manager to call into the hearing. Another building manager (the husband of the manager) called into the hearing. He acknowledged that there had been discussions with the tenant about a payment plan but when the proposed payment plan was discussed with the property manager the property manager was not agreeable to the tenant's proposal. The Operations Director also called into the teleconference call part way through the hearing and confirmed that the landlord is not agreeable to the payment plan proposed by the tenant. The tenant stated she is not able to pay the arrears any sooner than what she proposed. Since the parties were unable to reach a mutual agreement with respect to a payment plan I proceeded to hear the landlord's requests for an n Order of Possession and Monetary Order for unpaid rent, as filed.

It should be noted that the tenant was very upset during the hearing and had to be cautioned to cease interrupting other people when they were speaking. The tenant was eventually able to adequately control her conduct. The tenant also appeared to be pleading for me to authorize or order the landlord to accept the payment plan she proposed, describing the dire financial and medical circumstances of her and her daughter. As I informed the tenant, I cannot order the landlord to accept a payment plan as proposed by the tenant. Rather, a payment plan would have to be reached by mutual agreement.

#### 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?

#### Background and Evidence

The tenancy started in February 2013. The rent was initially set at \$800.00 due on the first day of every month. After serving Notices of Rent Increases that took effect February 2015 and February 2016 the tenants' rent obligation is of \$857.00 per month.

It was undisputed that as of November 1, 2016 the tenants were in rental arrears of \$1,570.00. On November 5, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The 10 Day Notice indicates the tenants owed \$1,570.00 in unpaid rent as of November 1, 2016 and has a stated effective date of November 15, 2016. The tenants did not pay the outstanding rent or file to dispute the 10 Day Notice within five days of receiving it. On November 21, 2016 the landlord filed this Application.

The parties were in agreement that the tenants made partial payments in December 2016 and January 2017 and that as of today's date the tenants still owe \$1,049.00 in rent to the landlord.

The landlord seeks an Order of Possession as soon as possible and a Monetary Order for \$1,049.00 in unpaid rent plus recovery of the filing fee. The landlord did not request authorization to retain the security deposit and confirmed that it will remain in trust to be administered in accordance with the Act.

The tenant did not dispute that the landlord is entitled to the remedies sought but described dire financial and medical circumstances for her and her daughter, the co-tenant.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. An inability to pay does not form a legal basis or exemption from this requirement under the Act.

Where a tenant does not pay all of the rent that is due 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 tenants were in rental arrears of \$1,570.00 as of November 1, 2016 and the landlord posted 10 Day Notice on the tenants' door on November 5, 2016. Since the Notice was posted, it is deemed to be received by the tenants three days later on November 8, 2016 and the effective date automatically changes to read November 18, 2016 pursuant to section 53 of the Act.

Since the tenants did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving the 10 Day Notice I find the tenancy ended on November 18, 2016 and the landlord is entitled to regain possession of the rental unit. As provided under section 55 of the Act, I have some discretion as to the effective date provided on the Order of Possession. Considering the tenants have occupied the rental unit nearly four years and are suffering from medical and financial strains, I provide an Order of Possession that is effective 14 days after service.

It was undisputed that the tenants owe the landlord rent of \$1,1049.00 as at the time of the hearing and I provide the landlord with a Monetary Order for that amount, plus an award for recovery of the \$100.00 filing fee paid for this application. Should the tenants made a payment toward the arrears after the teleconference call ended, as the tenant indicated she would do during the hearing, the landlord is at liberty to enforce the remaining balance.

For added certainty, the security deposit remains in trust for the tenants, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective 14 days after service upon the tenants.

The landlord has been provided a Monetary Order in the total amount of \$1,149.00 to serve and enforce upon the tenants 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: January 05, 2017

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Residential Tenancy Branch