



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      FF, MNR, MNSD, OPR

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$4500.00, a request to retain the security deposit towards the claim, and a request that the respondent bear the \$50.00 cost of the filing fee that the applicant paid for the application for dispute resolution.

### Background and Evidence

The applicant testified that:

- The tenant has failed to pay rent of \$1500.00 per month for the months of January 2011 in February 2011.
- The tenant was served with a 10 day Notice to End Tenancy for non-payment of rent which was posted on his door on January 27, 2011.

- To date the tenant has not vacated the rental unit nor paid the outstanding rent. The applicant is therefore requesting an Order of Possession for as soon as possible, and an order for the outstanding rent of \$3000.00, and he is also requesting March 2011 rent in the amount of \$1500.00.

The respondent testified that:

- He has withheld the rent for the months of January 2011 and February 2011, over a dispute with the landlord regarding utilities.
- He did receive the 10 day Notice to End Tenancy, and although he has not yet complied he is willing to vacate.

### Analysis

The tenant does not have the right to unilaterally withhold the rent, and therefore at this time he does owe \$3000.00 in outstanding rent.

Therefore since the landlord has served a proper Notice to End Tenancy he does have the right to an Order of Possession and an order for that outstanding rent.

I will also allow the landlords claim for the filing fee.

I will not however allow the landlords claim for March 2011, rent at this time, because the landlord is required to attempt to re-rent the unit and thereby mitigate his loss. The claim for March 2011 rent is therefore premature.

### Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenant.

I have issued a monetary order for \$3050.00.

The claim for \$1500.00 for March 2011 rent is dismissed with leave to reapply.

I make no order regarding the security deposit, because the landlord has withdrawn his request to retain the security deposit towards the claim.

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: February 17, 2011.

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Residential Tenancy Branch