



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent made an application to change the style of cause by changing the first name of the landlord, and I made that change accordingly.

Both parties appeared, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on October 5, 2011, by posting to the door of the rental unit. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord's agent testified that the tenancy commenced on June 1, 2011. Rent was in the amount of \$950.00 per month payable on the first day of each month. The tenants paid a security deposit in the amount of \$475.00 on May 27, 2011.

The landlord's agent testified that the tenants have not paid rent for July, August, September, October and November 2011, but the landlord is only seeking compensation for unpaid rent for the months of September, October and November 2011.

The tenant testified that she has withheld rent due to a mold problem in the rental unit, and that the mold has made her sick. She did not dispute the notice because the landlord had made an application and served her with a hearing date.

### Analysis

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

The tenant has not paid the outstanding rent 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.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$2,900.00 comprised of rent owed and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit and interest of \$475.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,425.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are 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, may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance 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: November 15, 2011.

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Residential Tenancy Branch