



# 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 landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 16, 2013, to the tenant (RR), which the tenant signed the Canada post tracking history on October 17, 2013. Filed in evidence is a copy of the Canada post tracking history, which provides a scanned signature of the tenant (RR). I find the tenant (RR) has been served in accordance with the Act.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 16, 2013, to the tenant (DP). The landlords stated the tenant (DP) had moved out of the rental unit on October 13, 2013 and Canada Post returned the package indicated that the tenant (DP) had moved.

As the tenant (DP) had moved prior to the landlord sending the package and the package was returned by Canada post as moved. I find the landlords have failed to serve the tenant (DP) in accordance with the Act, as the notice of hearing must mailed to the address where the tenant is currently residing at the time of mailing.

Therefore, this hearing proceeded against the tenant (RR). The landlords are at liberty to reapply against the tenant (DP).

The landlords appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?  
Are the landlords entitled to a monetary order?  
Are the landlords entitled to retain the security deposit?  
Are the landlords entitled to recover the cost of the filing fee?

### Background and Evidence

Based on the testimony of landlords, I find that the tenants were served with a notice to end tenancy for non-payment of rent on October 3, 2013, by registered mail, which the Canada post track, indicated the package was received on October 4, 2013, by the tenant (RR). A copy of the tenants scanned signature has been filed as evidence.

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 landlords testified the tenant (DP) vacated the unit on October 13, 2013. The landlord stated the tenant (RR) remains in the rental unit and that they have not paid any rent for October and November 2013. The landlord seeks to recover unpaid rent in the amount of \$2,900.00

### Analysis

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

The tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 tenant. 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 **\$2,950.00** comprised of unpaid rent for October, November 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlords retain the deposit and interest of **\$725.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,225.00**.

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

### Conclusion

The landlords' application against the tenant (DP) is dismissed with leave to reapply.

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, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due against the tenant (RR).

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 25, 2013

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Residential Tenancy Branch

