



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNR, MNSD, OPR, FF

### Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenants were properly served with the Application for Dispute resolution hearing package by way of registered mail.

### Issues to Be Decided

- Is the Notice to End Tenancy (the “Notice”) served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rental money payable to the landlord?
- Has the tenancy been reinstated?
- Is the landlord entitled to retain the deposit in partial satisfaction of any amount owing?

### Background and Evidence

The landlord served the tenants with a 10-Day Notice to End Tenancy on November 4, 2014, after not receiving full rent for the months of October and November. The tenants did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. A subsequent payment was made on January 3, 2014, that satisfied all arrears, as well as the rent for January. This sum was accepted by the landlord on a use and occupation basis.

### Analysis

The January 3, 2014 payment was accepted by the landlord on a use and occupation basis, and therefore not as a reinstatement of the tenancy. In the absence of the required rental payment, or a dispute of the notice within the 5 day period set out in the Notice, the tenants are conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act, as extended by virtue of the use and possession agreement. The landlord has therefore established a right to possession, effective the end of the occupation period of January 31, 2014.

The landlord is entitled to recover his filing fee of \$50.00 from the tenants. I order that the ll may retain this sum from the tenant's security deposit.

### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective on the 31 day of January, 2014. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I order, pursuant to section 38(1)(d) that the sum of \$50.00 be retained by the landlord from the tenants' security deposit, in partial satisfaction of the filing fee award noted above.

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 13, 2014

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Residential Tenancy Branch