



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bristol Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; the tenant was served in person by the landlord and has signed a document pertaining to service having taken place on December 14, 2013.

The landlord's agents appeared, gave affirmed testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This fixed term tenancy started on September 01, 2011 for two tenants. The female tenant moved out in May, 2013 and the tenancy continued with the male tenant only. Rent for this unit is now \$960.00 per month and is due on the first of each month. The tenant paid a security deposit of \$462.50 on September 01, 2011 and a pet deposit of \$462.50 on April 03, 2012.

The landlord's agent testifies that the tenant failed to pay rent for December, 2013. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on December 02, 2013. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 12, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for January and February, 2014. The total amount of unpaid rent is now \$2,880.00. The landlord has requested to amend their application to include the rent due on February 01, 2014.

The landlord's agent testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$25.00 for each month rent is late. The landlord seeks to recover \$75.00 in late fees for December, January and February, 2013

The landlord has applied to retain the tenant's security and pet deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied that there is outstanding rent for December, 2013 and January and February, 2014. As the tenant continues to reside at the rental unit I have allowed the landlords to amend their application to include some unpaid rent for February, 2014 as the tenant would be

aware that rent was due for February. However I must limit the landlords claim to half a month's rent at this time as it is still early in February; there is still an opportunity for the landlord to re-rent the unit for the other half of the month.

Consequently, the landlord is entitled to recover rent arrears of **\$2,400.00**.

I further find the landlord is entitled to recover **\$75.00** in late fees for December, January and February. The tenant would be aware a fee of this amount would be charged to the tenant if rent is late in any month as it is documented in the tenancy agreement signed by the parties.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposit of \$925.00 in partial payment of the rent arrears. There has been no accrued interest on the security or pet deposits for the period of the tenancy.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent for December, 2013, January, 2014 and half of February, 2014	\$2,400.00
Late fees for three months	\$75.00
Filing fee	\$50.00
Less security and pet deposits	(-\$925.00)
<b>Total amount due to the landlord</b>	<b>\$1,600.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant

had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1600.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

If the unit fails to rent for the remainder of February the landlord is at liberty to file a new application for unpaid rent.

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 04, 2014

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Residential Tenancy Branch

