



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent and the landlord's RTB filing fee.

The landlord participated in the teleconference hearing and gave affirmed evidence. The tenants did not attend the hearing. The landlord gave evidence that he served the tenants with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by personal service on January 3, 2014. I find that the tenants were properly served.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?

### Background and Evidence

A written tenancy agreement was put into evidence by the landlord. The tenancy agreement states the tenancy started on November 7, 2013 and the tenants are obligated to pay \$550.00 in rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$275.00.

The landlord gave evidence that he served the tenants with a Notice to End Tenancy for Unpaid Rent (the "Notice") on December 9, 2013 by putting the Notice through the mail slot in the tenants' door. The Notice states the tenants failed to pay rent of \$550.00 that was due on December 1, 2013. The Notice specifies a move-out date of December 30, 2013. Section 90 of the Act provides that because the Notice was served by putting it through a mail slot in the tenants' door, the tenants are deemed to have received the Notice three days later on December 12, 2013.

The landlord gave evidence that on January 3, 2014 the tenants gave him \$1,100.00 for December 2013 and January 2014 rent. The landlord did not reinstate the tenancy and wrote on the rent receipt "for use and occupancy only".

The landlord requests an order of possession effective in mid-February 2014. The landlord withdraws his application for a monetary order for the RTB filing fee of \$50.00.

### Analysis

I find that the tenants were served with the Notice on December 12, 2013. The tenants did not apply to dispute the Notice within five days. I accept the landlord's undisputed evidence that the tenants did not pay the rental arrears within five days of receiving the Notice. Pursuant to Section 46(5), the tenants are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I grant the landlord an order of possession effective February 14, 2014 at 1 p.m. which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I find that since the tenancy ended on December 30, 2013, the tenants are overholding tenants within the meaning of Section 57 since that date. The landlord is therefore entitled to compensation for the period between the December 30, 2013 and February 14, 2014. The landlord accepted a payment of \$550.00 for occupancy for the month of January 2014 and I find that is appropriate compensation for January 2014. I find that the landlord is entitled to \$275.00 as compensation for the period from February 1, 2014 to February 14, 2014.

The amount due the landlord is therefore \$275.00. The landlord is entitled to retain the security deposit of \$275.00 in satisfaction of this claim.

### Conclusion

I grant the landlord an order of possession. The landlord is entitled to retain the security deposit.

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

