



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord's agent called in and participated in the hearing and the tenant also called in and participated in the hearing.

### Issues

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

### Background and Evidence

This tenancy began on September 1, 2013 for a one year fixed term. The rent is \$900.00 due in advance on the first day of each month. The tenant paid a security deposit of \$300.00 on August 23, 2013. Gas and electricity are not included in the rent. The landlord's agent testified that the tenant was supposed to place the utilities in her name but failed to do so. The landlord's agent testified that the tenant did not pay rent for December when it was due. On December 27, 2013 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The agent testified that on October 11, 2013 there was a car accident that damaged the rental property. The tenant lived away from the rental unit until the damage was repaired. The rental unit was ready for occupation on November 30<sup>th</sup>. The landlord and the tenant made a verbal agreement that the tenant would be required to pay \$750.00 rent for December and the said amount would be paid by December 18<sup>th</sup>. When it was not paid the landlord served the Notice to End Tenancy for unpaid rent. On the Notice to End Tenancy the landlords also claimed \$59.56 for utilities

because the tenant failed to put the utilities in her name and the landlords were obliged to pay the utility bills on her behalf. The tenant has not paid the rent for December, January or February and she did not file an application to dispute the Notice to End Tenancy.

At the hearing the tenant did not disagree that she has not paid rent or utilities as claimed by the landlord. She said that she was away and did not receive the Notice to End Tenancy until after the time for disputing it had passed, but she did not say when she received it. The tenant said that she submitted evidence in the form of a letter in response to the landlords' application. The tenant's evidence was not on the file. She said that it was sent to the Residential Tenancy Branch on February 3, 2014. After the hearing was concluded I checked for late evidence submitted by the tenant, but there was no sign of any document submitted by the tenant. The tenant said at the hearing that the rental property was damaged when a car collided with the house on October 11, 2013. She had to find other accommodation while the house was repaired. The tenant said that she was claiming compensation from the landlords for her inconvenience, including the cost of cleaning her couch, which was covered with shattered glass as a result of the collision, but she has not filed an application for dispute resolution to advance such a claim. The tenant said she was prepared to pay the landlords the unpaid rent that was due, but the landlords' agent said that the landlords were not willing to continue the tenancy and wanted an order for possession pursuant to the Notice to End Tenancy.

### Analysis

Pursuant to section 90 of the *Residential Tenancy Act* the tenant was deemed to have been served with the Notice to End Tenancy on the third day after it was posted. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis 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.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$1,709.56 consisting of \$750.00 rent for December, \$900.00 for January and \$59.56 for utilities. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,759.56. I order that the landlord retain the security deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,459.56. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 06, 2014

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Residential Tenancy Branch

