



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Aquilini Properties LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes      CNC, CNR, OP MNR MNSD FF

### Introduction

This hearing dealt with applications by the tenants and by the landlord. The tenants first applied to cancel a one month Notice to End Tenancy for cause dated January 16, 2014. They later amended their application to include a claim to cancel a 10 day Notice to End Tenancy for unpaid rent dated February 4, 2014. The landlord applied for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's representatives and the tenant called in and participated in the hearing.

### Issues

Should either or both of the Notices to End Tenancy be cancelled?  
Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?  
Is the landlord entitled to an order allowing retention of the security deposit?

### Background and Evidence

This tenancy began on October 1, 2013 for a one year fixed term. The rent is \$975.00 due in advance on the first day of each month. The tenants paid a security deposit of \$487.50 at the start of the tenancy. The tenant did not pay the full rent for February when it was due. The sum of \$487.50 was paid by the Ministry of Employment and Assistance, but the balance of the rent for February was not paid. The landlord gave the tenant a receipt for the partial payment that stated that the payment was accepted for use and occupancy only and not as reinstating the tenancy. On February 4, 2014 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. At the hearing the tenant said that he has not paid the rent first, because he was out of work and second because he received advice

that he should not pay the rent until after this hearing was held because he had applied to dispute the Notices to End Tenancy given by the landlord. At the hearing the tenant said that he is able and willing to pay the rent. He mentioned problems with the rental unit and said that the landlord wanted to evict him for improper reasons, but was willing to allow his girlfriend to continue as a tenant.

The landlord's representative testified that no rent has been paid for March and the tenants failed to put the Hydro account into their names. The landlord claimed for unpaid rent and the additional sum of \$118.34 for unpaid utilities. The tenant has not paid rent for February or for March and he did not file an application to dispute the Notice to End Tenancy.

### Analysis

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. The tenants have not paid the full rent for February and paid no rent for March. The tenant claimed that he did not pay the rent because he received advice that he did not need to pay it until after this hearing was held. The advice that the tenant said he received was incorrect. The tenants had no entitlement to withhold payment of rent. The tenant has applied to dispute the 10 day Notice to End Tenancy, but I find that there are no grounds to cancel the Notice because the tenant has no legal basis to withhold the rent payment to the landlord.

### 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 \$1,462.50 for the outstanding rent for February and March. I allow the landlord's claim for unpaid utilities of \$118.34. The landlord has not supplied evidence to support its claim for repairs and I find that this claim is premature; if there is a claim for the cost of repairs to the rental unit it should be brought once the unit has been vacated and the full amount of any claim for cleaning and repairs is known. The claim for repairs is dismissed with leave to reapply. The landlord is entitled to recover

the \$50.00 filing fee for this application for a total award of \$1,630.84. I order that the landlord retain the deposit and interest of \$487.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,143.34. This order may be filed in the Small Claims Court and enforced as an order of that Court. Because the tenancy has ended pursuant to the 10 day Notice to End Tenancy for unpaid rent, there is no need to address the tenants' application to cancel the one month Notice to End Tenancy for cause and the tenants' application is dismissed.

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: March 21, 2014

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Residential Tenancy Branch

