



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OP MNR MNSD FF

### Introduction

This hearing dealt with an application by the landlord 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 called in and participated in the hearing. The tenants also called into the hearing and acknowledged that they received the application and Notice of Hearing sent to them by registered mail.

### Issues

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 November 1, 2013 for a one year term. The rent is \$1,800.00 due in advance on the first day of each month. The tenants paid a security deposit of \$1,800.00 at the start of the tenancy. The landlord testified that the tenants did not pay rent for January when it was due. On January 13, 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. The landlord testified that the tenants have not paid rent for January, February, March or for April and they did not file an application to dispute the Notice to End Tenancy. The landlord testified that the rental unit was rented as furnished. He said that the tenants have changed the locks to the rental unit and have refused to provide him with a key. He said that they have refused to answer the door or to respond his demands to pay rent.

The tenant said that he has paid the rent in cash each month except for April and has never received a receipt from the landlord. He said that he did not receive a copy of the Notice to End Tenancy and said that he changed the locks because the landlord was

entering the rental unit without permission. He said that he offered to give the landlord a copy of the new key but the landlord refused to accept it. The tenants did not submit any documents or evidence. The tenant said that he paid the rent for January on January 2<sup>nd</sup>. He said that the rent money was withdrawn from his bank each month and paid to the landlord in cash because the tenant does not have a checking account. The tenant testified that the money was income from employment. When I asked who was his employer He said that he was self employed and operated a construction business.

### Analysis

The tenants received Notice of this application in February and they were well aware that the landlord has claimed that rent has not been paid for the past four months. The tenant's claim that he has paid \$1,800 in cash each month without requesting a receipt is not credible, particularly when the tenant claims to have made such a payment in March after having been served with this application for dispute resolution. The tenant submitted no documentary evidence to support his claim. I find that his testimony as to rent payment is not credible. I accept and prefer the landlord's testimony that the tenant have paid no rent since the December rent payment. I find that the tenants were served with a proper form of 10 day Notice to End Tenancy which was posted to the door of the rental unit on January 13<sup>th</sup> and deemed to have been received three days later. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants 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 tenants do neither of these two things, the tenants are 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 \$7,200.00 for the outstanding rent for January, February, March and April. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$7,300.00. I order that the landlord retain the deposit and interest of \$1,800.00 in partial satisfaction of the claim and I grant the landlord an order under

section 67 for the balance due of \$5,500.00. 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: April 10, 2014

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Residential Tenancy Branch

