



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain all or part of the security deposit and/or pet damage deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental unit via registered mail on March 5, 2014. The landlord orally provided the registered mail tracking number as proof of service and confirmed that the tenant continues to reside at the rental unit. I was satisfied the tenant has been sufficiently served with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain any part of the security deposit and/or pet damage deposit?

### Background and Evidence

The tenancy commenced October 1, 2005 and the tenant paid a security deposit of \$340.00 and a pet damage deposit of \$340.00. The tenant is currently required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month. The tenancy agreement provides that the landlord may charge late fees and/or NSF fees of \$25.00 each.

On February 13, 2014 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates the tenant owed \$570.00 in rent as of February 1, 2014 and an effective vacancy date of February 23, 2014. The tenant did not file to dispute the Notice and did not vacate the rental unit. On March 14,

2014 the tenant paid the landlord \$1,200.00 which the landlord accepted “for use and occupancy only” and noted the payment did not reinstate the tenancy on the receipt.

The landlord submitted that as of today’s date the tenant still owes the landlord \$170.00. The landlord stated that authorization to deduct the outstanding rent and filing fee from the security deposit would be satisfactory in the event the tenant does not otherwise pay those amounts to the landlord.

In support of the landlord’s position the landlord provided a copy of the: the tenancy agreement; the tenant’s ledger reflecting all of the charges, including late fees, and payments since March 2013; and, the 10 Day Notice.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy on the tenant’s door on February 13, 2014. As the 10 Day Notice was posted it is deemed to be received by the tenant three days later. Therefore, the tenant had until February 21, 2014 to either pay the outstanding rent or file to dispute the Notice. Since the tenant did not pay the outstanding rent or file to dispute the Notice by February 21, 2014, I find the tenancy ended pursuant to the 10 Day Notice.

Since the 10 Day Notice was posted on the door and deemed to be received three days later, the effective date of the Notice automatically changes to read February 26, 2014 pursuant to sections 46, 53 and 90 of the Act. Therefore, I find the tenancy ended February 26, 2014.

I am also satisfied the landlord did not reinstate the tenancy as the landlord clearly communicated that subsequent payments by the tenant were for “use and occupancy only” and did not reinstate the tenancy.

In light of the above, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective April 30, 2014.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent and/or late fees in the amount of \$170.00 as requested. I also award the landlord recovery of the \$50.00 filing fee paid for this Application. Therefore, I order the tenant to compensate the landlord \$220.00.

I authorize the landlord to deduct \$220.00 from the tenant's security deposit in the event she does not pay the landlord \$220.00 as ordered.

### Conclusion

The landlord has been provided an Order of Possession effective April 30, 2014. The tenant has been ordered to pay the landlord \$220.00 and if the tenant fails to do so the landlord may deduct \$220.00 from the tenant's security deposit in satisfaction of this order.

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 23, 2014

---

Residential Tenancy Branch

