



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on July 1, 2011. Rent of \$1,104.28.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$510.00 as a security deposit from the Tenant. The Tenant failed to pay rent for March 2014 and

on March 6, 2014 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The effective date of the Notice is March 19, 2014. On March 11, 2014 the Tenant paid \$280.00 towards the rent and the Landlord issued a receipt for "use and occupancy only". The Tenant has not made an application for dispute resolution and moved out of the unit on some date prior to April 11, 2014. The Landlord claims unpaid rent and withdraws the claim for an order of possession.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") 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 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. Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired. Based on the Landlord's undisputed evidence I find that the Tenant was given a valid Notice and did not paid the rent in full within 5 days of the deemed receipt of the Notice. The Tenant has not filed an application to dispute the Notice. Given these facts, I find that the Landlord is entitled to an **Order of Possession**.

Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to the notice to end tenancy. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. As the Tenant vacated the unit on or before April 11, 2014 I find that the Landlord is entitled to **\$849.28** for March 2014 rent and **\$404.91** for over holding rent for April 2014, this amount prorated on a daily basis at \$36.81 per day for 11 days. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a

total monetary amount of **\$1,304.19**. Setting the security deposit of **\$510.00** plus zero interest off the entitlement leaves **\$794.19** owed by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$510.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$794.19**. If necessary, 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: May 08, 2014

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Residential Tenancy Branch