



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MND, MNR, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced in 2004. The monthly rent, which does not include utilities, was \$550.00. Although technically the rent was due on the first day of the month the reality was that the landlord stopped by to pick up the month's rent at any time during the month that was convenient for him. The tenant did not pay a security deposit. On December 1, 2013 the rent was increased to \$625.00.

On July 26 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the notice was September 30, 2014. The reason stated on the notice was that the unit would be occupied by the landlord. The landlord testified that this is his intention. The tenant never filed an application with the Residential Tenancy Branch disputing the notice.

The landlord testified that 2014 was an exceptionally busy year for him and he was not as regular as he had been when it came to picking up the rent. As a result of a discussion about whether or not the June rent had been paid the landlord checked his records and found that rent had not been collected in January, April or June of 2014.

The tenant testified that he issued cheques for every month but he had no way of knowing whether they had been cashed or not. He testified that he usually received receipts for rent payments made.

The landlord filed copies of rent receipts and bank records. They show that no deposit in the amount of \$625.00 was in any of those three months. There are no receipts for those months either.

The landlord testified that the September rent was returned to the tenant as he was entitled to one rent-free month. The tenant testified that the September rent was returned to him but then the landlord took it back.

The tenant testified that he has not paid any rent for October or November. The landlord testified that he has not gone to pick up the rent in either month.

The landlord claims \$300.00 as the anticipated cost of cleaning. He also claims \$200.00 as the anticipated cost of replacing a damaged door.

#### Analysis

Section 49(9) of the *Residential Tenancy Act* provides that a tenant who has received a 2 Month Notice to End Tenancy for Landlord's Use and has not filed an application disputing the notice within the time required:

- is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice; and,
- must vacate the rental unit by that date.

The tenant did not dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I accept the landlord's evidence that the rent was not paid in January April, and June of 2014. His documents were in good order. The tenant could have obtained banking records to show that the rent payments had come out of his bank account but did not.

I accept the landlord's evidence that the September rent was not paid for similar reasons.

The parties agreed that the October and November rents had not been paid.

In summary, I find that the arrears of rent of 2014 total \$3125.00.

The landlord's claim for cleaning is dismissed as premature. Although the landlord anticipate that cleaning will be required when the tenant moves out the actual cleaning and/or damages cannot be known or quantified.

Finally, as explained to the landlord in the hearing the claim for the damage to the door is dismissed as it is many years older (1957) than the expected useful life of a door in a rental unit and after depreciation was applied any claim would be reduced to zero.

As the landlord was substantially successful on his application he is entitled to reimbursement from the tenant of the \$50.00 he paid to file it.

Therefor I find that the landlord has established a total monetary claim of \$3175.00 comprised of arrears of rent in the amount of \$3125.00 and the \$50.00 fee paid by the landlord for this application and I grant the landlord an order pursuant to section 67 in that amount.

#### Conclusion

An order of possession, effective two days after service on the tenant, has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.

A monetary order in the amount of \$3125.00 has been granted to the landlord. If necessary, this order may be filed in the Provincial 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: November 27, 2014

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Residential Tenancy Branch

