



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OTBEC Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **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's representatives called in and participated in the hearing. The tenant did not attend the hearing. The landlord served the application for dispute resolution and the Notice of hearing on November 10, 2014, by leaving a copy of the documents inside the rental unit on the counter.

### 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

As set out in the written tenancy agreement the tenancy began on November 7, 2013. The rent is \$1,025.00 per month, payable on the first of each month. The tenant paid a \$512.50 security deposit at the beginning of the tenancy.

The landlord had concerns about the tenant's conduct which it said provided grounds to end the tenancy for cause. On September 19, 2014 the tenant signed a mutual agreement to end tenancy whereby he agreed to move out of the rental unit on October 31, 2014. The landlord testified that the tenant did not pay the rent for October and owed some arrears from August. On October 6, 2014 the landlord's representative served the tenant with a 10 day Notice to End Tenancy for non-payment of rent by posting a copy to the door of the rental unit. The landlord testified that the tenant has not paid rent for subsequent months. He did not file an application to dispute the Notice to End Tenancy and he continues to occupy the rental unit despite promises that he will move out.

### 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. If, as in the present case, 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. The tenant has also signed a mutual agreement to end tenancy, but has not moved as required by the agreement.

### 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* – Sections 88 and 89 of the *Residential Tenancy Act* provide directions with respect to the service of documents. Pursuant to Section 88 (e), a document may be served on a person by attaching a copy to the door or other conspicuous place at the rental unit. There are, however, special rules that apply to the service of applications for dispute resolution. They are set out in section 89 of the *Act*. There are only three methods of serving an application for dispute resolution upon a tenant; first, by personal service to the tenant; second, by registered mail sent to the address where the tenant resides and third, as ordered by the director. Section 89 (2) enlarges the allowable methods of service, but the provisions of section 89(2) apply only to applications for an order for possession and not to proceedings claiming a monetary order. Because the landlord has not served the tenant either personally, or by registered mail, as required by section 89 (1) of the Act, the landlord's application for a monetary order is dismissed with leave to reapply. The landlord is entitled to recover the \$50.00 filing fee from the security deposit that it holds, thereby reducing the amount of the security deposit to the sum of \$462.50.

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: December 10, 2014

---

Residential Tenancy Branch

