



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Landmark Realty Ltd. Mission  
and [tenant name suppressed to protect privacy]

## **DECISION**

Codes: MNR, MNSD, OPR, FF

### Introduction:

This was an application by the landlord for an Order for Possession, a Monetary Order pursuant to a Notice to End the Tenancy dated October 3, 2014. Both the landlord and tenant attended the application.

### Issues:

Is the landlord entitled to an Order for Possession and Monetary Order?

### Background and Evidence:

The landlord's agent testified that the tenancy began on April 1, 2014 with rent in the amount of \$ 900.00 due in advance on the first day of each month. The tenant paid a security deposit of \$ 450.00 on March 27, 2014. The landlord's agent JA testified that she served the Notice to End the tenancy on October 3, 2014 by posting it to the tenant's door. The tenant admitted service of the landlord's original Application for Dispute Resolution claiming for an Order for Possession and a monetary Order in the amount of \$ 900.00 but did not pick up the second package containing the landlord's amended copy of the Application for Dispute Resolution wherein the landlord claimed for three months of arrears and lost revenue (October through December 2014) amounting to \$ 2,700.00. The landlord's agent testified that the arrears from October through December 2014 were \$ 2,700.00. The landlord requested an Order for Possession and a monetary Order but requested that the security deposit not be applied to this amount.

The tenant testified that he had not received the landlord's amended application but admitted not paying any rent for the time period claimed by the landlord. He asked that I apply his security deposit to any monetary Order granted to the landlord.

Analysis:

Based on the evidence of the landlord I find that the tenant was deemed to have been personally served with a Notice to End Tenancy for non-payment of rent on October 6, 2014 by posting it to the door on October 3, 2014. The tenant admitted receiving the original application for Dispute Resolution but not with the amended one. As the tenant admitted not paying any rent for the period that the landlord was claiming I have amended the original Application for Dispute Resolution to include recovery of rent and loss of revenue for the period of October through December 2014.

The tenant has not paid all the outstanding rent on time and has not applied for arbitration to dispute the Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenant.

I find that the landlord has established a claim for unpaid rent totalling \$ 1,800.00 for October and November 2014. Because it is still early in the month, I allow the landlord's claim for the loss of revenue for only one half of December amounting to \$ 450.00 and the filing fee of \$ 50.00 for a total claim of \$ 2,300.00. I have not deducted any of the security deposit pursuant to the landlord's request but I caution the parties to abide by section 38 of the Act. I have reproduced the most relevant portions here:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Conclusion:

I have granted the landlord an Order for Possession. This order may be filed in the Supreme Court and enforced as an Order of that Court. I grant the landlord an order under section 67 for the balance due of **\$ 2,300.00**. This order may be filed in the Small

Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenant as soon as possible. The landlord may reapply for any other loss of revenue or losses sustained.

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 01, 2014

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Residential Tenancy Branch

