



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been personally served with the application for dispute resolution and notice of hearing on December 16, the tenants did not participate in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The undisputed evidence of the landlord is as follows. The tenancy began on April 1, 2014 at which time the tenants paid a \$475.00 security deposit. Rent was set at \$950.00 per month to be paid in advance on the first day of each month. The tenancy agreement provided that late rental payments would be subject to a \$25.00 late payment fee.

The tenants failed to pay rent on December 1, 2014 and on December 2, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice to the door of the rental unit. The landlord received the following payments:

December 2	\$ 440.00
December 13 (accepted for use and occupancy only)	\$ 320.00
December 22 (accepted for use and occupancy only)	\$ 480.00
January 11 (accepted for use and occupancy only)	\$ 100.00
<b>Total:</b>	<b>\$1,340.00</b>

The landlord seeks an order of possession and a monetary order for the outstanding rental arrears, 2 late payment fees for the months of December and January and recovery of the \$50.00 filing fee paid to bring their application.

### Analysis

I accept the landlord's undisputed testimony and I find that the tenants failed to pay rent on December 1 as required under the tenancy agreement. I find the tenants received the Notice on December 5, 3 days after it was posted on the door of the rental unit. The tenants failed to pay the entire amount of rental arrears within 5 days of having received the Notice and did not dispute the Notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord is entitled to an order of possession and I grant the landlord that order. The order must be served on the tenants and may be filed in the Supreme Court for enforcement if required.

I find that the tenants have now paid the arrears owing for month of December but still owe the landlord a \$25.00 late payment fee pursuant to the terms of the tenancy agreement. I award the landlord \$25.00. Because the tenancy ended in December 15 pursuant to the Notice, I find that the tenants were not under an obligation to pay rent in January and therefore cannot be subject to a late payment fee. I dismiss the claim for a late payment fee for January.

I find that the landlord lost income for the month of January because the tenants did not vacate the rental unit. The tenants paid \$390.00 in occupational rent for the month of January and I find that the landlord is entitled to recover the balance of the income they lost for that month. I award the landlord \$560.00. I find that as the landlord has been substantially successful in their claim, they should recover their filing fee and I award them \$50.00.

The landlord has been awarded a total of \$635.00 which represents a \$25.00 late payment fee, \$560.00 in occupational rent for January and the \$50.00 filing fee. I order the landlord to retain the \$475.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$160.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$160.00. The landlord will retain the security deposit

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: January 13, 2015

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Residential Tenancy Branch

