



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession, a monetary order and an order to retain the tenant's security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing

### Issue(s) to be Decided

Is the landlord entitled to an order for possession pursuant to a Notice to End Tenancy for unpaid rent dated December 2, 2014?

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a strata title apartment in Surrey. The tenancy began on September 1, 2011. The current rent is \$1,643.00 due in advance on the first day of each month. The tenant paid a security deposit of \$775.00 at the start of the tenancy. The tenant did not pay rent for December, 2014 when it was due. On December 2, 2014 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by attaching it to the door of the rental unit. The Notice claimed that the tenant failed to pay rent in the amount of \$1650.00 consisting of rent for December and arrears from November. The tenant did not pay the amount due for rent within five days of receiving the Notice to End Tenancy. After she received the Notice to End Tenancy the tenant made a partial payment of rent in cash in the amount of \$715.00 on December 14, 2014. She made a further payment of \$740.00 by certified cheque on December 18, 2014. The tenant did not pay the balance of the outstanding rent for December and she did not file an application to dispute the Notice to End Tenancy. The landlord filed his application for dispute resolution on December 30, 2014. In the application he claimed a monetary

award in the amount of \$845.00, said to be the balance of unpaid rent plus amounts owed for several strata council bylaw infraction fines.

At the hearing the landlord said that after taking into account the two payments made by the tenant in December there was \$1950.00 outstanding for rent, leaving aside the bylaw infraction charges. The tenant made two payments on January 11, 2015. She paid \$1,000.00 and a further \$820.00 by two money order payments. The landlord issued receipts for each payment; they noted that the payments were received : "for use and occupancy only tenancy not continuing". The landlord said that after taking into account the two payments there was \$18.00 outstanding for rent for January.

The tenant testified at the hearing that she has applied to the strata council to request that the bylaw fines be cancelled. The landlord confirmed at the hearing that he has received invoices from the strata council but he has not yet paid the fines.

The tenant testified at the hearing that she wants to continue the tenancy. The landlord said that he does not want to reinstate the tenancy because of the history of late rent payments. He said that he would be willing to allow the tenant to remain until the end of February provided February rent is paid on time, but not beyond the month of February.

### 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 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 did not pay December's rent within the five day period and the landlord did not accept the payments so as to reinstate the tenancy. Similarly, rent payments for January, including arrears from December were accepted for use and occupancy only. The tenant has not applied to dispute the Notice to End Tenancy.

### 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 January 31, 2015, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The landlord has the discretion to withhold enforcement of the order for possession until the end of February if he chooses.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$18.00 for the outstanding rent for January. Because the landlord has not paid the amounts claimed for bylaw infraction fines and because there is a prospect that some or all of the fines might be cancelled, I dismiss the landlord's claim for recovery of bylaw fines with leave to reapply. . The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$68.00. I order that the landlord retain the said sum from the security deposit that he holds, leaving a security deposit balance of \$707.00 to be dealt with at the end of the tenancy.

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 26, 2015

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Residential Tenancy Branch

