



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mnr, opr, mnsd, ff

### Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order; and an order to retain the security deposit.

I accept that the tenant was properly served with the Application for Dispute resolution hearing package and the 10 day Notice to End Tenancy.

### Issues to Be Decided

- Is the Notice to End Tenancy effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

### Background and Evidence

This tenancy began on July 1, 2014. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$700.00. A security deposit of \$350.00 was paid at the start of the tenancy. The landlord served the tenant with a 10-Day Notice to End Tenancy on or about January 7, 2015, after not receiving rent for the month of January. The tenant did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. No further rent has been paid, as the tenant is unhappy with the state of repair of the premises.

### Analysis

Section 26 of the Residential Tenancy Act requires a tenant to pay rent as and when due, even if a landlord's obligations have been breached in some manner. In the absence of the required rental payment for January or a dispute of the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of

section 46(5)(a) of the Residential Tenancy Act. Accepting that the tenant received the Notice on January 7, 2015, the effective end date of the tenancy was January 17, 2015. As this effective end date of the tenancy has now passed, and no further rent has been paid, the landlord has established a right to possession.

The landlord withdrew the claim for loss of February rent, but is entitled to recover the rental arrears for January of \$700.00 and the \$50.00 filing fee from the tenant, and may retain the security deposit in partial satisfaction of that \$750.00 award.

### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I further order pursuant to section 38(1) that the full amount of the security deposit (\$350.00) be retained, in partial satisfaction of the monetary award noted above. The remaining balance of the award to the landlord, equalling \$400.00, must be paid immediately by the tenant to the landlord.

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: February 04, 2015

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Residential Tenancy Branch

