



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      opr, mnr, ff

### Introduction

The landlord applies for an Order of Possession and a Monetary Order.

I accept that the tenant was properly served with the Application for Dispute resolution hearing package by way of registered mail.

### Issues to Be Decided

- Is the 10 day Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rent money due and payable by the tenant?

### Background and Evidence

This tenancy began on December 1, 2013. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$1,300.00. A security deposit of \$650.00 was paid at the start of the tenancy. The tenant fell into arrears, and the landlord personally served the tenant with a 10-Day Notice to End Tenancy on January 6, 2015, after not receiving the required rent, which at that time was \$2,100.00 (\$800.00 for December, and \$1,300.00 for January). The tenant did not pay the rent owed or apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. No further rental payment has occurred, yet the tenant remains in possession.

### Analysis

In the absence of the required rental payment, 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. As the effective date of the Notice has passed, the landlord has established a right to possession.

The landlord is entitled to recover the rental arrears of \$2,100.00 for December and January, and the \$50.00 filing fee from the tenant. As the claim is for “unpaid rent”, and as the tenant knows or should know that he owes for the landlord’s loss of rental income

for February, I consider the claim to apply to ongoing loss of rental income. I consider that the earliest the landlord will be able to place a new tenant is mid-February, and find the tenant liable for the landlord's loss of rent to that time, which is \$650.00. The landlord remains at liberty to re-apply for any further losses suffered in this tenancy.

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.

The landlord is issued a monetary order in the amount of \$2,800.00, representing the rental arrears for December (\$800.00), January (\$2,100.00) and first half of February (\$650.00) and recovery of the filing fee (\$50.00).

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 05, 2015

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Residential Tenancy Branch

