



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mnsd, opr, mnrr, ff

### Introduction

The landlord applies for an Order of Possession, a Monetary Order; and an order to retain the security deposit.

### Issues to Be Decided

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

### Background and Evidence

This tenancy began on November 1, 2014. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$2,000.00. A security deposit of \$1,000.00 has been paid. The tenants acknowledge that the landlord served them with a 10-Day Notice to End Tenancy on January 10, 2015, after not receiving all rent for the month of January. In fact, Ministry cheques totalling \$1,200.00 had been paid prior to that date, of which \$700.00 was applied towards the rental arrears for December, and the remaining \$500.00 was applied towards January's rent, leaving unpaid rent for January of \$1,500.00, at the time the Notice was given.

On January 13<sup>th</sup>, one of the tenants left a message for the landlord, indicating they hoped to stay, but understood if the landlord wanted them to move. On January 15<sup>th</sup>, another of the tenants left a message that he wished to resolve the issue of the rental arrears, and wanted the tenancy continue. It was too late for the landlord to respond to this message, and he left the country early the following morning, and returned January 24. On that date, the tenant offered to pay the full balance of rent owed, as well as February's rent, as a reinstatement of the tenancy. The landlord declined to do so.

The landlord has since received Ministry cheques totalling \$1,200.00. He has not yet cashed these, and the tenants confirmed at the hearing that these could be cashed and applied to the January rental arrears, leaving a balance owing of \$300.00 for January and \$2,000.00 for February.

### Analysis

The message left by the tenant on January 15, allegedly offering to pay the rental arrears was left before the expiration of the 5 day period in which payment was required pursuant to the 10 day Notice. This message however, does not constitute an actual attempt to pay rent within the 5 day period. I am provided no proof that the tenants in fact had the balance of rent in hand, or that they were in any position to bring the rent to the landlord that day. I also note in this regard, that a prior offer to pay December's arrears had been made on December 21, 2014, in which the tenant promised to pay the arrears by December 31, 2014. No such payment occurred, which suggests that the January 15 message could similarly have been a delay tactic, and not an actual attempt to pay.

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 tenants are 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 current rent balance owing is \$2,300.00, representing the arrears for January, and the rent for February. The landlord is also entitled to recover his \$50.00 filing fee from the tenants. I note that rent obligations under this tenancy are joint and several. Accordingly, each tenant is individually liable to ensure that all rent is paid (not just their respective share of the rent), and the landlord is entitled to collect the full rent from any one or more of the tenants.

#### 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 tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$2,350.00, representing the unpaid rent and the filing fee. The security deposit including accrued interest to the date of this hearing, totals \$1,000.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$1,350.00, be paid immediately.

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 11, 2015

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Residential Tenancy Branch

