



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee for the cost of making the Application.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony. No issues were raised by the parties in relation to the service of the Landlord's Application and the notice to end tenancy.

The hearing process was explained and both parties were given a full opportunity to present evidence, make submissions to me and to cross examine the other party.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for January 2015?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this fixed term tenancy of one year started in August, 2010 and continued on a month to month basis. A written tenancy agreement was completed which established rent payable by the Tenant in the amount of \$3,800.00 on the first day of each month.

The Tenant paid the Landlord a security deposit in the amount of \$1,900.00 at the start of the tenancy which the Landlord now seeks to keep and offset against unpaid rent.

The Landlord testified that the Tenant failed to pay rent on January 1, 2015. As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 14, 2015.

The Notice was provided into written evidence and shows an expected date of vacancy of January 24, 2015 due to \$3,800.00 in unpaid rent due on January 1, 2015.

The Landlord testified that the Tenant had also failed to pay for February 2015 rent but he was only seeking to recover lost rent for January 2015.

The Tenant acknowledged receipt of the Notice and did not dispute the Landlord's testimony. The Tenant confirmed that due to the collapse of his business he was unable to pay rent for January, 2015. The Tenant testified that he was making concerted efforts to find a new rental suite to move to.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act.

I accept the Landlord's undisputed evidence that the Notice was served to the Tenant and that the Tenant has failed to pay rent or make an Application to dispute the Notice.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. Therefore, the Landlord is entitled to an Order of Possession which is effective immediately as the vacancy date on the Notice has now passed.

The Landlord is also entitled to recover lost rent in the amount of **\$3,800.00** for January 2015 as the Tenant confirmed that this remains unpaid.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$3,850.00**.

As the Landlord already holds the Tenant's **\$1,900.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of rent claimed in the amount of **\$1,950.00**.

### Conclusion

The Tenant has breached the Act by failing to pay rent under the tenancy agreement.

As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep all of the Tenant's security deposit.

The Landlord is granted a Monetary Order for the balance of January 2015 unpaid rent in the amount **\$1,950.00**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

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 12, 2015

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Residential Tenancy Branch

