



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing, by serving an adult person, who resides in the rental unit on January 31, 2015, in person, which was witnessed. The tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenant was served with a notice to end tenancy for non-payment of rent on January 2, 2015, in person, which was witnessed. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The agent for the landlord stated that when the notice to end tenancy was issued the tenant had not paid rent for December 2014 and January 2015. The agent stated the tenant did pay the outstanding rent for December 2014, but failed to pay any rent for January 2015. The agent stated the tenant further failed to pay rent for February 2015. The landlord seeks a monetary order for unpaid rent in the amount of \$2,200.00.

The agent for the landlord stated that they do not want the security deposit to offset the outstanding rent at this time as they are uncertain if the tenant has caused damage to the rental unit.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent, did not apply to dispute the notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$2,250.00** comprised of unpaid rent for January 2015, February 2015 and the \$50.00 fee paid by the landlord for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the landlord's agent requested that the security deposit not offset the monetary order because they may have a further claim for damages to the rental. Therefore, I grant the agents request and I have not offset the monetary award with the security deposit.

In any case, Section 38 (3) of the Act states that a landlord may retain from a security deposit or a pet damage deposit an amount that an Arbitrator has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and a monetary order in the above noted amount.

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 17, 2015

---

Residential Tenancy Branch

