



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and an agent for the landlord attended the hearing, and the landlord's agent gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on February 4, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord and the landlord's agent. The landlord's agent testified that the documents were served on that date and in that manner and orally provided a tracking number. He also testified that the cash register receipt from Canada Post bears the date of February 4, 2015, and a search on-line with Canada Post shows that the tenant has not yet picked up the registered mail, but it has not yet been returned to the landlord.

The *Residential Tenancy Act* provides that documents served by registered mail are deemed to have been served 5 days after they were mailed. The landlord's agent provided such testimony and was able to orally provide a tracking number assigned by Canada Post. In the circumstances, I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or art of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1<sup>st</sup> day of each month. Over the course of the tenancy the landlord has collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided which also includes a pet damage deposit in the amount of \$425.00, however the landlord's agent testified that none of the pet damage deposit has ever been collected.

The landlord's agent further testified that the tenant has been a good tenant, but failed to pay rent for the month of January, 2015. On January 16, 2015 the landlord served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail, and has provided the first page of that notice. The notice is dated January 15, 2015 but the effective date of vacancy has been left blank. It states that the tenant failed to pay rent in the amount of \$850.00 that was due on January 1, 2015.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and no rent has been paid since it was issued. The tenant is now in arrears of rent another \$850.00 for February's rent.

Analysis

The *Residential Tenancy Act* states that once a tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant is served or deemed served. In this case, the Notice does not contain an expected date of vacancy, however the *Act* also

states that incorrect effective dates are changed to the nearest date that complies with the *Act*. The landlord's agent testified that it was served by registered mail on January 16, 2015 and is therefore deemed to have been served 5 days later, or January 21, 2015, and the effective date of vacancy is January 31, 2015. The tenant did not pay the rent and did not dispute the notice, and therefore the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

With respect to the monetary claim, I am satisfied, in the absence of any evidence to the contrary, the tenant is in arrears of rent \$850.00 for January and \$850.00 for February, 2015, for a total of \$1,700.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$425.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,325.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$425.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,325.00.

These orders are final and binding and may be enforced.

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

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Residential Tenancy Branch

