



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, ET, FF

### Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Early End to Tenancy, an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

At the outset of the hearing the Landlord withdrew his application for an Order ending the tenancy early pursuant to section 56(1).

The Landlord testified he served the Tenants with the Notice of Hearing and their Application on February 3, 2015 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of February 8, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating that the tenancy began September 15, 2014. The Landlord testified that monthly rent was payable in

the amount of \$750.00. A security deposit in the amount of \$375.00 was paid on September 15, 2014.

The Landlord testified that the Tenants were regularly late paying rent. Introduced in evidence were 10 day Notice to End Tenancy dated September 20, 2014; October 5, 2015 (which, according to the Landlord, should have read 2014); December 17, 2014; and, January 21, 2015.

The final 10 Day Notice to end Tenancy for non-payment of rent, which is referenced on the Landlord's Application for Dispute Resolution and upon which the application was based, was issued on January 21, 2015 and indicated that the sum of \$400.00 was due as of January 1, 2015 (hereinafter referred to as the "Notice").

Based on the testimony of the Landlord, I find that the Tenants were served with the Notice on January 21, 2015 by posting to the door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of January 24, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 29, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant paid \$250.00 on January 21, 2015 leaving \$150.00 owing for January 2015 rent. The Landlord testified that the Tenant also failed to pay February 2015 rent such that the total of \$900.00 remained outstanding for rent.

### 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 and 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.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession 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 \$950.00 comprised of \$150.00 for January 2015 rent and \$750.00 for February 2015 rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$575.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 26, 2015

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Residential Tenancy Branch

