



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on February 9, 2015. The Residential Tenancy Act provides that It is deemed received 3 days later. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on February 16, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a.        Whether the landlord is entitled to an Order for Possession?
- b.        Whether the landlord is entitled to A Monetary Order and if so how much?
- c.        Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d.        Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2015. The rent is \$1450 plus utilities per month payable in advance on the first day of each month.

At the time the Notice to End Tenancy was served the tenant owed the sum of \$1450 in outstanding rent. However, on February 16, 2015 the tenant made a lump sum payment paying off the arrears of rent, the balance of the security deposit and the pet damage deposit. The landlord accepted the payment unconditionally. In addition the tenant paid the landlord \$50 for the cost of the filing fee.

Analysis:

The Residential Tenancy Act provides that where a tenant pays the arrears within 5 days of receiving the 10 day Notice to End Tenancy the Notice is void. The Notice was served by posting on February 9, 2015. It is not deemed received until 3 days later. Thus I determined the Notice was void when the tenant paid the arrears on February 16, 2015.

Even, if the tenant paid the arrears after the 5 day period the tenant is entitled to have this application dismissed. The law provides that where arrears are paid after the 5 day period a landlord has an election to make. The landlord can accept the payment and reinstate the tenancy. Alternatively, the landlord can accept the payment for "use and occupation only" in which case the tenancy will end at the end of the rental payment period. In this case the landlord accepted the payment unconditionally and therefore reinstated the tenancy.

As a result I ordered that the application for an Order for Possession be dismissed. Further I ordered that the application for a monetary order and cost of the filing fee be dismissed as those claims have been paid.

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: March 10, 2015

