



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PORTE REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

The tenant did not attend. The landlord gave sworn testimony that she served the Notice to end Tenancy dated February 16, 2015 taped on the door and the Application for Dispute Resolution personally with a witness. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

The tenant was issued a Notice to End Tenancy dated February 16, 2015 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 2013, a security deposit of \$450 was paid and rent is currently \$919 a month. The landlord said that arrears of \$919 plus \$25 late fee were owed when the Notice was served in February 2015. However, she said the tenant paid those arrears on March 16, 2015 and promised he would pay his March and other future rent. She said she gave him a receipt for the payment in March but did not put any limiting terms on it such as "for use and occupancy only" and the tenant may have thought his tenancy

continued. Rent is now owed for March and April 2015 plus a \$25 late fee for each month.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis**

The Residential Policy Guideline 11 notes that when rent is accepted without limitation after a Notice to End Tenancy has been issued, the intent of the parties is put in issue. I find the weight of the evidence is that the landlord accepted February's rent in March 2015 and did not issue a receipt limiting her acceptance to "use and occupancy only". I find also that both she and the tenant thought the tenancy would continue as the tenant promised to pay the rent in future. The evidence indicates that the intention of the parties was to invalidate the Notice and continue the tenancy.

Therefore, I dismiss this Application of the landlord and give her leave to reapply. As discussed in the hearing, if further 10 day Notices are issued and the landlord wants to pursue them, the landlord must make it clear that the tenancy is not continuing if rent is accepted after the effective date of the Notice.

**Conclusion:**

For the reasons stated above, I dismiss this Application of the landlord with leave to reapply. No filing fee is awarded as the Application was unsuccessful.

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: April 02, 2015

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Residential Tenancy Branch

