



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NO. 260 SEABRIGHT HOLDINGS LTD. DBA MARTELLO TOWER  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR OPR 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; 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 the Notice to end Tenancy dated March 11, 2015 was served by posting it on the tenant's door and the Application for Dispute Resolution by registered mail. It was verified online that the postal service attempted delivery on April 2, 2015 and after several notices were left and the tenant failed to claim it, it was returned to the sender on April 25, 2015. I find that the tenant is deemed to be served with the documents according to sections 89 and 90 of the Act.

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

The tenant was issued a Notice to End Tenancy dated March 11, 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:**

The tenant did not attend but is deemed to be served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord testified that tenancy commenced on October 1, 2014, rent is \$1550 a month and a security deposit of \$775 was paid. The landlord testified that the tenant paid rent for March in full in April and was given a receipt for 'use and occupancy only' so the tenancy was not reinstated. The landlord said the tenant paid \$500 towards rent for April but has paid nothing since. The landlord requests an Order of Possession and a monetary order for \$1050 (balance of April's rent) plus \$1550 for

May's rent. The landlord was charging a late fee of \$50; however, I pointed out that Regulation 7 of the Residential Tenancy Regulation limits late fees to \$25 a month. The landlord requests that late fees for April and May be added to the rent owing. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession**

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

#### **Monetary Order**

I find that there are rental arrears in the amount of \$2600 representing rental arrears to April 30, 2015 plus late fees of \$50. I find the landlord has not requested to use the security deposit to offset the amount owing so it is to be held in trust and dealt with according to section 38 after the tenant has vacated.

### **Conclusion:**

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

#### **Calculation of Monetary Award:**

Rent arrears to April 30, 2015	2600.00
Late fees \$25x2	50.00
Filing fee	50.00
Total Monetary Order to Landlord	2700.00

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: May 06, 2015

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**Residential Tenancy Branch**

