



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPR, MNR, FF (Landlord's Application)  
                                 CNR, MNR, MNDC, FF

Dispute Codes            OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for 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.

The Tenant also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlords and an articulated student, L.V., appearing with the Landlords appeared at the hearing. The Landlord C.D. confirmed that his name was incorrectly spelled on the Tenant's application, and that the correct spelling was used on the Landlord's Application. Accordingly, the style of cause on this my decision and resulting orders contains the correct spelling of the Landlord's name.

All participants gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord L.D. testified that she served the Tenant with the Notice of Hearing and their Application on August 26, 2015 by registered mail. A copy of the registered mail receipt and tracking number was provided in evidence. Under the Act documents served this way are deemed served 5 days later; accordingly, I find the Tenant was duly served as of August 31, 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 and which indicated the tenancy began November 1, 2014. Monthly rent was payable in the amount of \$1,200.00 “in advance”. The Landlord confirmed that rent was paid prior to the end of the month preceding the month for which the payment was applicable. The Tenant paid a security deposit of \$600.00.

The Tenant failed to pay rent for the month of June 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 8, 2015 by registered mail in which the amount of \$1,200.00 was noted as due as of May 30, 2015 (the “Notice”).

Section 90 of the Act provides that documents served in this manner are deemed served five days later. Accordingly, I find that the Tenant was served with the Notice as of June 13, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, June 18, 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 Tenant filed a Tenant’s Application for Dispute Resolution on June 18, 2015.

L.D. testified that the Tenant also did not pay rent for July or August 2015 such that the sum of \$3,600.00 was 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 his application to dispute the Notice is dismissed. He 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 \$3,650.00 comprised of \$1,200.00 for rent for the months June, July and August 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,050.00**.

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

L.V. stated that the Landlords wished to pursue a monetary claim against the Tenant for the cost of a water technician attending the property and being denied entry by the Tenant as well as the loss incurred by the Landlords when the Tenant refused them access to harvest their hay. I informed L.V. that as the Landlord's had not indicated they were seeking this relief on their application, that the Tenant was not given proper notice. I further informed L.V. that the Landlords were at liberty to apply for further monetary relief with respect to these two claims as well as any further claims arising from the tenancy.

#### Conclusion

The Tenant failed to pay rent and did not attend 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 Landlords are granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and are granted a monetary order for the balance due.

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: August 21, 2015

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Residential Tenancy Branch

