



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BARAFIELD REALTY LTD C/O GATEWAY MANAGEMENT  
CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on July 16, 2015 and
2. To recover the cost of filing the application.

The landlord's application is seeking orders as follows:

1. For an order of possession
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The landlord appeared.

### Tenant's application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

### Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served in person on July 23, 2015.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenant was served with a notice to end tenancy for non-payment of rent on July 16, 2015. The tenant confirmed receipt when they filed their application for dispute, resolution on July 17, 2015 to dispute the notice. The tenant failed to appear at the hearing and their application to cancel the notice was dismissed.

The landlord's agent testified that when the tenant initially moved into the rental unit the tenant found a couple of cockroaches. The agent stated that the landlord immediately had a pest control company attend.

The landlord's agent testified that the tenant was still not happy and the tenant wanted to move. The agent stated that because of that they returned to the tenant their rent for July 2015, which had been paid. However, a few days later the tenant informed them that they would not be moving.

The landlord's agent testified that they only returned July 2015, rent as the tenant was going to move from the rental unit. However, the tenant has not moved and has not paid any rent for July, August and September 2015. The landlord seeks an order of possession and a monetary order.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Although the tenant filed an application for dispute resolution to cancel a notice to end tenancy, their application was dismissed. Further, I find there is no merit to the tenant's application as rent has not been paid.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this case, the landlord's agent originally returned July 2015, rent to the tenant as the tenant informed the landlord that they did not want to live in the rental unit. However, shortly thereafter the tenant notified the landlord that they would not be vacated the premises. The tenant did not repay July 2015, rent and has not paid any rent for August 2015 and September 2015. I find the tenant has breached section 26 of the Act.

I find that the landlord has established a total monetary claim of **\$2,780.00** comprised of unpaid for July 2015, August 2015, September 2015 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$455.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,275.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant 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: September 21, 2015

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Residential Tenancy Branch

