



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CORNERSTON PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF (Landlord's Application)  
MT, CNR (Tenant's Application)

### Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution the Landlord sought 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 Tenants also applied for dispute resolution although failed to attend the hearing. Accordingly, the Tenants' application is dismissed without leave to reapply.

The Landlord's property manager, J.M., and resident caretaker, D.K. appeared at the hearing (collectively referred to as the "Landlord"). They 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.

J.M. testified she personally served the Tenants with the Notice of Hearing and their Application on September 23, 2015; accordingly, I find the Tenants were duly served as of September 23, 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.

### Preliminary Matter

The Landlord testified that the Tenants vacated the rental unit on October 23, 2015. Accordingly, an Order of Possession was not required as the Tenants had already given up possession of the rental unit.

Issue to be Decided

Have the Tenants breached the Act or tenancy agreement entitling the Landlord to a Monetary Order?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began July 1, 2015; monthly rent was payable in the amount of \$1,000.00; and the Tenants paid a security deposit of \$500.00 on June 8, 2015 and a pet damage deposit of \$500.00 on July 15, 2015.

The Landlord testified that the rent was reduced by \$150.00 as the rental property was undergoing significant Tenant failed to pay rent for the month of August 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 17, 2015 in which the Landlord indicated the amount of \$1,800.00 was due as of August 1, 2015 (the "Notice"). Also introduced in evidence was a Tenant Leger supporting the amount claimed by the Landlord.

Based on the testimony of J.M. and the filed Proof of Service—Notice to End Tenancy (which was signed by the Tenants), I find that the Tenants were personally served with the Notice on September 17, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, September 22, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

J.M. testified that the Tenant also did not pay rent for September 2015, or October 2015. At the hearing the Landlord sought the sum of \$2,700.00 which included the filing fee. The Landlord sought authorization to retain the \$1,000.00 pet damage and security deposits to be applied to the outstanding amount and requested a Monetary Order for the balance due in the amount of \$1,700.00.

Analysis

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

The Tenants have not paid the outstanding rent and did not attend the hearing to dispute the Notice. As such, they are 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 Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

As the Tenants vacated the rental unit on October 23, 2015, an Order of Possession was not required.

I find that the Landlord has established a total monetary claim of \$2,700.00 comprised of rent owed and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the pet damage and security deposit of \$1,000.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,700.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenants failed to pay rent and did not attend to dispute the Notice to End Tenancy. The Landlord may keep the security deposit in partial satisfaction of the claim, and is granted a Monetary Order for the balance due in the amount of **\$1,700.00**.

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: November 13, 2015

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Residential Tenancy Branch

