



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$ for unpaid rent and damages
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party. The applicant testified FDV is the owner of the real property. I determined he is a sufficient party to bring this claim even though the tenancy agreement refers to an entity not related to the applicants.

I find that the 10 day Notice to End Tenancy was personally served on the Tenants on October 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenants as they have acknowledged service of the same. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2015 and continue for one year and become month to month after that. The rent is \$1350 per month payable on the first day of each month. The tenants paid a security deposit of \$675 at the start of the tenancy.

The tenant(s) failed to pay all of the rent for October and the sum of \$675 was owed at the time the Notice was served. The tenants have since paid the arrears for October, the all of the rent for November and all of the rent for December. The landlord holds half of the rent for January 2016 but he has not cashed the cheque as yet.

FB testified he is seriously ill and has spent much of the time in October and November in hospital. The other tenant DB has been out of town much of the time. FB testified the issues around paying the rent on time have been fully resolved. One of the tenants has had his pension reinstated. Also they have received a significant amount of money which will be used for the payment of rent..

FB testified that the previous manager DH was told of the tenants' health and pension problems and he told them that it was okay for the second portion of the rent to be paid late so long as it was paid by the 25<sup>th</sup> of the month. DH is no longer employed by the landlord although there is a letter presented by the landlord indicating that he wished to stay in the building. FB testified there were two other residents in the building who received the same accommodation as him. The landlord denied this arrangement existed. However, the previous manager did not testify at the hearing nor present evidence in the form of an affidavit or written statement.

### Analysis - Order of Possession:

This is a difficult case. In a situation like this the landlord would normally be granted an Order for Possession. However, the tenant testified the landlord's manager granted them an accommodation that so long as the arrears were paid by the 25<sup>th</sup> day of the month the landlord would not take action to obtain an Order for Possession. The landlord failed to present evidence of any sort from the previous manager to dispute this testimony nor did the landlord present evidence as to why the previous manager was not able to give evidence. I am cognizant that the end of a tenancy is a major event in a tenant's life especially if they are in ill health and should be granted only in the clearest of circumstances. I am also cognizant the rent has been fully paid as of the date the hearing including the rent for November and December and the landlord is not in a

situation where there is a continuing loss of rent. Finally I considered the tenant's serious health problems, the fact the other tenant has been out town for a significant period of time and the tenant's representations that their financial difficulties have been resolved and there will be no difficulty paying the rent in the future. In the circumstances I find that the previous manager represented to the tenant they had to the 25<sup>th</sup> of the month to pay the rent and the landlord is estopped from relying on the 10 day Notice to End Tenancy dated October 2, 2015. As a result I dismissed the landlord's application for an Order for Possession. If the landlord wants the rent to be paid on the first of the month, the landlord retains the legal right to advise the tenant that it is reinstating all of the terms of the tenancy agreement and that the rent must be paid on the first of the month.

Analysis - Monetary Order and Cost of Filing fee:

I determined that while the previous manager gave the tenant an accommodation that they would not take steps to obtain an Order for Possession provided the rent was paid by the 25<sup>th</sup> of the month this did not include the waive of the \$25 late fee. I granted the landlord a monetary order in the sum of \$25 plus the sum of \$50 in respect of the filing fee for a total of \$75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: December 23, 2015

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Residential Tenancy Branch

