



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENAKO HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

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

Only the Landlord's Resident Manager, D.D. appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

D.D. testified that she served the Tenant with the Notice of Hearing and their Application by registered mail on October 19, 2015. She provided to me the tracking number for the registered mail. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 24, 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 and Procedural Matters

At the outset of the hearing, D.D. testified that the tenant vacated the rental unit on October 25, 2015. As a result, the Landlord requested to withdraw their request for an Order of Possession as the Tenant had already given up possession of the rental unit by vacating the rental unit on October 25, 2015.

### Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to monetary relief?
2. Should the Landlord be authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement; which provided as follows: the tenancy began June 1, 2015; monthly rent was payable in the amount of \$925.00; a security deposit in the amount of \$462.50 was paid on May 18, 2015; and the Tenant paid \$20.00 per month for an extra parking spot.

The Tenant failed to pay rent for the month of October 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on October 5, 2015 indicating the amount of \$945.00 was due as of October 1, 2015 (the "Notice").

Based on the testimony of D.D., I find that the Tenant was served with the Notice on October 5, 2015 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of October 8, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 13, 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.

D.D. testified that the Tenant did not apply for dispute resolution. D.D. also confirmed that the Tenant did not pay the outstanding rent.

D.D. testified that on October 25, 2015 she found the keys to the rental unit on her door knob. When she went to the rental unit she also discovered that the Tenant had vacated the rental unit save and except for a large box of refuse.

D.D. testified that the rental unit was re-rented as of December 1, 2015. She confirmed that the Landlord also sought compensation for lost rent for the month of November

2015 as, due to the date the Tenant vacated the rental unit, and the cleaning that was required, it was not immediately re-rented. In total the Landlords sought the sum of **\$1,920.00** including \$945.00 for October 2015 rent, \$925.00 for November 2015 rent and recovery of the \$50.00 filing fee.

### Analysis

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

I find that the Landlord has established a total monetary claim of **\$1,920.00** comprised of \$945.00 for October 2015 rent, \$925.00 for November 2015 rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of **\$462.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,457.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Landlord may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 15, 2015

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Residential Tenancy Branch

