



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on November 1, 2010. Rent of \$890.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$435.00 as a security deposit from the Tenant. The Tenant owed arrears and failed to pay rent for October 2015 and on October 16, 2015 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Landlord is not sure how the amounts on the Notice were calculated and

did not provide any accounting documents. The Tenant agrees that the amount on the Notice of \$5,280.00 is the total owed up to and including rent for October 1, 2015. The Tenant states that since receiving the Notice the Tenant paid \$460.00 towards the arrears, owes \$690.00 for November and owes \$890.00 for December 2015. The Landlord does not agree that the Tenant paid anything towards the arrears but agrees with the Tenant's evidence of payment for November and December 2015. Tenant has not made an application for dispute resolution and has not moved out of the unit. The Landlord claims unpaid rent to and including December 2015 and an order of possession effective December 31, 2015.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the Landlord has not provided any accounting documents to substantiate the amounts owed I prefer the Tenant's evidence and find that the Tenant owed the amount stated on the Notice as of October 1, 2015 and did not pay this amount within the time allowed. As such the Landlord is entitled to an **Order of Possession**. Based on the Tenant's evidence of rents paid since October 1, 2015 I find that the Landlord has substantiated that the Tenant owes **\$6,400.00** in unpaid rent up to and including December 2015.

The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$6,450.00**. Setting the security deposit of \$435.00 plus zero interest off the entitlement leaves **\$6,015.00** owed by the Tenant to the Landlord.

### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on December 31, 2015.

**I order** that the Landlord retain the **deposit** and interest of \$435.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$6,015.00**. If necessary, this order may be filed in the Small Claims 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 16, 2015

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Residential Tenancy Branch

