



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            O, CBR, FF, MNR, MNSD, OPR

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for an Order for unpaid rent, a request for recovery of the filing fee, and a request to retain the full security deposit towards the claim.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed

### Issue(s) to be Decided

The issues are:

- Whether or not to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.
- Whether the landlords have established monetary claim against the tenants, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on February 1, 2015 with a monthly rent of \$1100.00 due on the first of each month.

The parties also agree that a \$550.00 security deposit was paid on February 1, 2015.

The landlords testified that the tenants failed to pay the November 2015 rent and therefore on November 5, 2015 a 10 day Notice to End Tenancy was posted on the tenants door.

The landlords further testified that the tenants have failed to comply with that notice and have failed to pay any further rent, and therefore they are asking for an Order of Possession for as soon as possible and for a Monetary Order as follows:

November 2015 rent outstanding	\$1100.00
December 2015 rent outstanding	\$1100.00
January 2016 rent outstanding	\$1100.00
Filing fee	\$50.00
Total	\$3350.00

The tenants testified that they did not pay the November 2015 rent because the landlord had left the country and they did not know where they were to pay their rent.

The tenants further testified that they did find the ten-day Notice to End Tenancy on November 7, 2015, posted on their door, and therefore they filed a dispute of that notice on November 10, 2015.

The tenants further testified that a lady at the Residential Tenancy Branch told them not to pay any further rent until the arbitration hearing had been held, and therefore they have withheld their rent.

### Analysis

The tenants have admitted that they did not pay the November 2015 rent and that they did receive the ten-day Notice to End Tenancy on November 7, 2015 and it is my decision that since the tenants have failed to pay any rent for the months of November 2015 through January 2016, the landlord does have the right to an Order of Possession based on the Notice to End Tenancy.

Section 46 of the Residential Tenancy Act states:

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The tenants have argued that they did not know where to pay the rent for the month of November 2015; however the landlord's address is clearly printed right on the Notice to End

Tenancy, and therefore the tenants could have easily paid the rent once that notice was received.

The tenants also claim that someone at the Residential Tenancy Branch told them not to pay the rent, however, although I was not a party to that conversation, I find it highly unlikely that anyone at the Residential Tenancy Branch would advise the tenant not to pay their rent.

Section 26 of the Residential Tenancy Act states:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Therefore, since the tenants have not paid any rent for the months of November 2015 through January 2016, I will also issue an Order for that outstanding rent, totaling \$3300.00.

Having allowed the landlords request for an Order of Possession and a Monetary Order, I also allow the request for recovery of the \$50.00 filing fee.

### Conclusion

Pursuant to section 55 of the Residential Tenancy Act, I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have allow the landlords full monetary claim of \$3350.00 and I therefore Order that the landlords may retain the full security deposit of \$550.00 and pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order in the amount of \$2800.00.

The tenant's application is dismissed in full without leave to reapply.

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: January 14, 2016

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Residential Tenancy Branch

