



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution he claimed 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 Tenant sought an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 13, 2016 (the "Notice"), more time to make his application and an Order that the Landlord make emergency repairs to the rental unit.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that his son in law, T.P., person served the Tenant with the Notice of Hearing and their Application on January 27, 2016. Based on the Landlord's undisputed testimony I find the Tenant was duly served as of January 27, 2016.

The Tenant failed to call into the hearing and as such his application is dismissed.

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 confirmed that as the Tenant failed to pay the security deposit, his claim for authority to retain the security deposit was made in error. Accordingly, pursuant to section 64(3)(c), I amend his application for dispute resolution to remove this request.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows. The tenancy began September 1, 2015. Monthly rent was payable in the amount of \$675.00. A security deposit in the amount of \$337.50 was to be paid pursuant to the tenancy agreement; however, the Landlord testified that the Tenant failed to pay his security deposit as required.

The Landlord testified that the Tenant failed to pay rent for the month of December 2015 and January 2016. The Landlord issued the Notice on January 13, 2016 indicating the amount of \$1,687.50 was due as of January 1, 2016 (the "Notice"). The sum of \$1,687.50 included outstanding rent for December 2015 in the amount of \$675.00, outstanding rent for January 2016 in the amount of \$675.00, and the security deposit of \$337.50.

Based on the undisputed testimony of the Landlord, I find that the Tenant was personally served with the Notice on January 13, 2016 by the Landlord's son in law, T.P.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 18, 2016. 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.

The Landlord testified that the Tenant failed to pay the outstanding rent.

The Tenant applied for dispute resolution on January 21, 2016 (although erroneously stamped 2015 on the copy in the Branch file). As this was outside the five days required by the Act the Tenant also sought more time pursuant to section 66(1).

The Landlord testified that the Tenant also failed to pay the February 2016 rent in the amount of \$675.00 and the March rent of \$675.00. In total the Landlord sought the sum of **\$2,800.00** for the following:

December 2015 outstanding rent	\$675.00
January 2016 outstanding rent	\$675.00
February 2016 outstanding rent	\$675.00
March 2016 outstanding rent	\$675.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$2,800.00</b>

### Analysis

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

The Tenant has not paid the outstanding rent. The Tenant also failed to attend the hearing such that his application for an order cancelling the Notice is dismissed.

Section 55 of the *Residential Tenancy Act* provides as follows:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Accordingly, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of **\$2,900.00** comprised of \$2,800.00 in outstanding rent as detailed above and the \$100.00 fee paid by the

Landlord for this application; as such, I grant the Landlord a Monetary Order under section 67 for the amount of **\$2,900.00**. This Monetary 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 his application to dispute the Notice to End Tenancy is dismissed. Pursuant to section 55 of the Act, the Landlord is granted an Order of Possession 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: March 10, 2016

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Residential Tenancy Branch

