



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes      OP MNR MNSD FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's representative called in and participated in the hearing. The tenant did not appear although he was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on March 1, 2016.

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

### Background and Evidence

This tenancy began on June 15, 2013. The current rent is \$1,466.57 due in advance on the first day of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy. The tenant did not pay rent for February when it was due. On February 2, 2016 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit. The tenant paid the rent for February, but he failed to do so within the five day period that would have served to cancel the Notice to End Tenancy. The rent was paid on February 16, 2016 and the landlord accepted the tenant's payment: "for use and occupancy only". The landlord has not agreed to reinstate the tenancy. The landlord has accepted payments for March and April and has issued receipts: "for use and occupancy only".

The landlord's representative testified at the hearing that the tenant owes the sum of \$74.90 as unpaid late fees for past late payments pursuant to the tenancy agreement which provides for a \$25.00 charge for late rent payments.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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. The tenant failed to pay the rent for February within the five day period and did not apply to dispute the Notice to End Tenancy. The tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective April 30, 2016, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$74.90 for the late fees. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$174.90. I order that the landlord retain the deposit and interest of \$said sum from the \$700.00 security deposit that it holds, leaving a balance of \$525.10 to be dealt with at the end of the tenancy in accordance with the *Residential Tenancy Act*.

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: April 14, 2016

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Residential Tenancy Branch