



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding D.S. Bains Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing with a witness, and the landlord's agent gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on March 18, 2016, no one for the tenant attended the call. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord's agent and witness. The landlord's agent testified that the tenant was served on that date and in that manner and referred to a tracking number provided by Canada Post. The landlord's agent also testified that the registered mail was returned to the landlord unclaimed by the tenant and the landlord received the hearing package back on April 14, 2016. I accept the testimony of the landlord's agent and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The evidence provided by the landlord has been reviewed and is considered, along with the testimony of the landlord's agent, in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 15, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$1,050.00 per month is payable on the 1<sup>st</sup> day of each month, and the landlord collected a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a lower suite within a rental home and the upper suite is also tenanted.

The landlord's agent further testified that the tenant fell into arrears of rent and on March 6, 2016 the landlord's witness posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated March 6, 2016 and contains an effective date of vacancy of March 16, 2016 for \$1,050.00 of unpaid rent that was due on March 1, 2016. A Proof of Service document has also been provided showing that the landlord's witness served it on that date and it is witnessed and signed by another person not subject to this proceeding.

The tenant has not served the landlord with an application for dispute resolution disputing the notice, however the tenant paid rent in full on March 23, 2016. The tenant has not paid any rent for April, so still owes the landlord \$1,050.00. The tenant told the landlord's agent that she was moving out on April 15, 2016 but has not moved out. The landlord claims an Order of Possession and a monetary order in the amount of \$1,050.00.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the notice has no effect. Alternatively, the tenant may dispute the notice by filing an application for dispute resolution within that 5 day period. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. I am satisfied that the tenant was deemed to have been served with the notice on March 9, 2016, being 3 days after posting it to the door of the rental unit. The tenant did not pay the rent by March 14, 2016, and did not dispute the notice and therefore I am satisfied that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession. Since the effective date of vacancy, changed pursuant to the *Act* to March 19, 2016 has passed, I grant the Order of Possession on 2 days notice to the tenant.

I also accept the testimony of the landlord's agent that the tenant paid the rent that was overdue at the time the notice to end tenancy was issued, albeit after the effective date of vacancy, but the tenant has continued to reside in the rental unit without paying rent. I find that the landlord has established a claim in the amount of \$1,050.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$525.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$625.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I hereby order the landlord to keep the \$525.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$625.00.

This order is final and binding and may be enforced.

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 29, 2016

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Residential Tenancy Branch