



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause
- b. A monetary order in the sum of \$1500 for the cost to repair damage to the rental unit.
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The landlord testified that he personally served the one month Notice to End Tenancy on the Tenants on July 8, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenants on March 7, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2015. The rent is \$900 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$450 at the start of the tenancy.

Despite the service of the one month Notice to End Tenancy the landlord continued to accept the rent unconditionally without qualification. He also introduced into evidence a

warning letter dated December 18, 2015, December 25, 2015, and January 28, 2016 were the landlord warned the tenants and threatened to bring a application for an Order for Possession.

Analysis - Order of Possession:

I dismissed the landlord's application for an Order for Possession as I determined the landlord has reinstated the tenancy. The one month Notice to End Tenancy was served on the tenants in early July 2015. Since then the landlord has accepted the rent from the tenant's without qualification on many occasions. In so doing I determined the landlord has reinstated the tenancy.

Where a landlord has served a Notice to End Tenancy on the tenants and the tender the rent, the landlord has an election to make. The landlord can accept the rent payment "for use and occupation only" or unconditionally without qualification. If the landlord accepts the rent payment "for use and occupation only" he is advising the tenants he is still relying on his rights in the Notice to End Tenancy and that the tenants are obliged to vacate at the end of the rental payment period after the landlord has obtained an Order for Possession. If the landlord accepts the payment unconditionally without qualification he is reinstating the tenancy and can no longer rely on an earlier Notice to End Tenancy.

Analysis - Monetary Order and Cost of Filing fee:

I dismissed the landlords' claim for a monetary order in the sum of \$1500 for damage to the rental unit. The landlord has not regained possession of the rental unit. The landlord has not presented sufficient evidence that the rental unit has been damaged. I determined the claim is premature. As a result I ordered that the application for a monetary order be dismissed with liberty to re-apply.

The landlord has not been successful with this application. As a result I dismissed this claim for the cost of the filing fee.

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 21, 2016

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Residential Tenancy Branch

