



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with an application for dispute resolution by the landlord for an order of possession and a monetary order. The hearing was set for 10:30 am; the tenant called into the hearing at 10:38 am. Both parties gave affirmed testimony.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

The parties agreed that this one year fixed term tenancy commenced September 1, 2015; that the monthly rent is \$825.00 and is due on the first day of the month; and that the tenant paid a security deposit of \$412.50.

The parties all testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent in March. The tenant testified that he made a partial payment at that time and was almost caught up. The landlord testified that \$150.00 remained unpaid for March. The tenant was unable to confirm that amount.

The landlord filed an application for dispute resolution on May 31, 2016. The tenant acknowledged receipt of the application and the Notice of Hearing.

On June 2 the landlord issued and posted a new 10 Day Notice to End Tenancy for Non-Payment of Rent claiming arrears of rent for March, April, May and June. The tenant acknowledged receipt of that notice.

On June 15 the landlord amended the Application for Dispute Resolution to increase the amount claimed. The amended application was served on the tenant by registered mail actually received on June 24, 2016.

Each 10 Day Notice to End Tenancy for Non-Payment of Rent includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Further the notice advises that:

“The tenant may not withhold rent unless order by an arbitrator, or the tenant has paid for emergency repairs and provided the landlord with receipts and a written description of what happened.”

The tenant testified that he had withheld the balance of the March rent, and the rent for April, May and June because his numerous complaints to the landlord had not been addressed. He also testified that he has not filed an application for dispute resolution against the landlord nor has he obtained an order from the Residential Tenancy Branch permitting him to withhold rent.

### Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent.

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$2725.00 comprised of arrears of rent in the amount of \$2625.00 and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$412.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2312.50.

### Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$2312.50 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: June 30, 2016

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Residential Tenancy Branch

