



# 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      mnr, opr

### Introduction

The landlord has applied for an Order of Possession and a Monetary Order.

The landlord was represented at the hearing, but the tenant did not attend. I accept that the tenant was properly served with the Application for Dispute resolution hearing package and the notice of this hearing by way of registered mail sent to the subject residential rental unit. Such service satisfies the provisions of Section 89(1) of the Residential Tenancy Act and the tenant is deemed to have received these documents by virtue of Section 90(a).

### Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there rental money owing and payable to the landlord?

### Background and Evidence

This tenancy began on May 4, 2013. Rent is due on the 1<sup>st</sup> day of each month in the amount of \$785.00. A security deposit of \$375.00 was paid. The landlord served the tenant on April 5, 2016 with a 10-Day Notice to End Tenancy, after not receiving rent for the month of April. No dispute of this Notice was ever made by the tenant. The tenant paid a portion of the rental arrears within the 5 day period, paying \$600.00 on April 6. The tenant later paid the balance of April's rent, plus a late fee charge for March and for April. The tenant did not move out, and paid rent for May plus a late fee on May 16. Receipts for the various rental payments made after the 10 Day Notice was served were given, which indicated the funds were received on the basis of use and occupation only. The tenant remains in possession and has paid no rent for June.

### Analysis

In order to prevent the tenancy from ending, the tenant was required to pay the full arrears of April's rent within the 5 day period, as mandated by section 46(4) of the Residential Tenancy Act, and as set out in the 10 Day Notice. This did not occur, although eventually the full arrears were paid. By receipting the eventual payments of arrears and the subsequent May rent on an use and occupation basis, I find that such rent was not accepted by the landlord as a reinstatement of the tenancy. Accordingly, in

the absence of the required full rental payment or a dispute of the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act, as extended to May 31, 2016 by virtue of the occupation agreement. That date has now passed, and the landlord has therefore established a right to possession. An order of Possession is issued effective June 10, 2016.

As the tenant remains in possession, the tenant is considered to be overholding, and the landlord is entitled to recover compensation from the tenant for rental loss, pursuant to section 57(3) of the Residential Tenancy Act. I accept the landlord's testimony that this loss will be at least for half the month of June, and that an appropriate sum to award is \$375.00. I order that the tenant pay this sum to the landlord. To satisfy this order, the landlord may retain the tenant's deposit pursuant to section 38 of the Residential Tenancy Act.

#### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective on the 30<sup>th</sup> day of April, 2015. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$375.00.

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 06, 2016

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Residential Tenancy Branch