



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      mnr, mnsd, opr, ff

### Introduction

The landlord applies for an Order of Possession, a Monetary Order for unpaid rent and loss of rental income, and an order to retain the security deposit.

The landlord was represented at the hearing, and the female tenant attended as well. No issues were raised as to service upon the tenants of the notice of this hearing, or of the 10 day Notice to End Tenancy.

### Issues to Be Decided

- Is the 10 day Notice to End Tenancy served upon the tenants effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is money payable by the tenants to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

### Background and Evidence

This tenancy began on March 30, 2016. Rent of \$925.00 is due on the 1<sup>st</sup> day of each month. A security deposit of \$467.50 was paid at or before the start of the tenancy. On January 3, 2017 the landlord served the tenants with a 10 day Notice to End Tenancy, after not receiving rent for the month of January. The tenants did not pay the rent or apply for dispute resolution within the required five days of receiving the Notice. The tenants remain in possession, and have paid no further rent. The tenants had informed the landlord they could pay the rent on January 18, 2017, but in fact on January 13, 2017 the landlord was at their door demanding that they leave. The female tenant testified that the landlord had failed to make repairs and that there were bugs in the premises. The tenant had wanted to failed a claim as against the landlord after the landlord came to her door on January 13, 2017, but became ill and has not filed any claim to date.

The landlord seeks an immediate Order of Possession, and a Monetary Order for the unpaid rent for January and overholding rent for February.

### Analysis

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due, whether or not the landlord complies with the Residential Tenancy Act, the regulations, or the tenancy agreement. This means the tenants were obliged to pay their rent, whether or not the landlord had failed to make certain repairs, and whether or not the landlord had failed to comply in some other respect. The tenants failed to pay the rent when due on January 1, and the landlord was then entitled to end the tenancy by serving a 10 day Notice, pursuant to section 46 of the Residential Tenancy Act. Upon receipt of that Notice on January 3, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. I note that even if the landlord agreed to accept a payment on January 18, there is no evidence before me that the landlord also agreed that the tenancy would continue beyond the 10 day period set out in the Notice.

By virtue of section 46(5)(a) of the Residential Tenancy Act, in the absence of a required rental payment by the tenants within 5 days of being served with a 10 day Notice to End Tenancy, or a dispute of that Notice within the 5 day period set out in the Notice, the tenants are conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice. The effective date of the Notice has passed and no rent has been paid since the Notice was given. The tenancy has therefore ended, and the landlord has established a right to possession. Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenants

The landlord is entitled to recover compensation equal to 1 ½ months of rent (covering January 1 to February 14, 2017). This includes unpaid rental arrears for January, and compensation to February 14 for the tenants overholding after the end of the tenancy (pursuant to section 57(1)(3) of the Residential Tenancy Act). I note that a claim for overholding rent for February was not claimed in the landlord's Application. However, Rule 4.2 of the Rules of Procedure permits an application to be amended at the hearing, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. Such amendment is appropriate and is ordered in this case. Since the landlord is successful with this claim, it is also appropriate that the landlord recover the \$100.00 filing fee from the tenants, and to retain the security deposit in partial satisfaction of the sum found owing by the tenants.

### Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenants. Should the tenants 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 \$1,492.50 representing the rental arrears, overholding rent to February 14, and the recovery of the filing fee.

The security deposit totals \$467.50. I order, pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$1,025.00 be paid immediately by the tenants to the landlord.

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: February 14, 2017

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Residential Tenancy Branch