



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            mndc, mnr, mnsd, opr, ff

### Introduction

The landlord applies for an Order of Possession, a Monetary Order; and an order to retain the security deposit.

### 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 the amount claimed by the landlord in fact due and payable by the tenants?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

### Background and Evidence

This tenancy began on August 1, 2014. Rent of \$850.00 was agreed to be due on the 1<sup>st</sup> day of each month, but after one month the rent was reduced to \$800.00, in exchange for yard clean up by the tenants. A security deposit of \$425.00 was paid. On January 11, 2015 the landlord served the tenants with a 10-Day Notice to End Tenancy, after not receiving the full rent for the month of January. Over the next 10 days the tenants paid a further \$300.00. The tenants did not apply for dispute resolution within the required five days of receiving the Notice to End Tenancy. \$100.00 remains owing for January, and no rent has been paid for February.

The tenants allege they have made verbal agreements with the landlord to pay rent late in the past. The tenants further allege they have done work to the premises, including cleaning and painting, pursuant to a verbal agreement with a daughter of the landlord. The tenants testified that no agreement was made as to the amount or date of payment for any such work. The landlord denies that any agreements were ever made, and that the premises were provided fit for occupancy when the tenancy began.

### Analysis

The tenants have not proven that their tenancy agreement permits them to pay rent late, and it is important to note that no dispute of the 10 day Notice was filed by the tenants. 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 tenants are 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 the effective date of the Notice has passed, the landlord has established a right to possession.

The absence of any agreement as to an amount or date for any painting or other work to the premises makes it clear that any such agreement, if it exists, was never intended to permit the tenants to offset work as against the rent they owed. As such, I cannot consider the value of any work to the premises in the context of the present dispute, which deals with the issue of the tenants' non-payment of rent.

The arrears for January (\$100.00) are found payable by the tenants to the landlord. In terms of February rent, as the tenancy has now ended, and an Order of Possession granted to the landlord, it remains possible that the landlord will place new tenants in the premises as early as mid-February. I therefore find that a proven loss of rental income suffered by the landlord for February at this stage is limited to half the rent for February, or \$400.00. Should the landlord suffer further loss, the landlord is at liberty to file a further claim to deal with such loss. The landlord is therefore entitled to recover the sum of \$500.00 from the tenants, together with the \$50.00 filing fee. As this sum exceeds the amount of the deposit, the landlords may retain the security deposit in partial satisfaction of this award.

#### 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 \$550.00 representing the value of rental income loss to mid- February and the recovery of the filing fee.

The security deposit including accrued interest to the date of this hearing, totals \$425.00. 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 \$125.00 be paid by the tenants to the landlord immediately.

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 05, 2015

---

Residential Tenancy Branch

