



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes            OPR, MNR, MNDC, MNSD, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession, a Monetary Order for unpaid rent, A Monetary Order for compensation for damage or loss under the Act, an Order to keep all or part of the security deposit, other issues and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on September 28, 2009. The landlords amended their application and this was sent to the tenants by registered mail on October 19, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on October 03, 2009 and October 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Are the landlords entitled to claim for a loss of revenue?
- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order to recover the filing fee?

## Background and Evidence

This tenancy started on May 01, 2009. The rent for this unit is \$550.00 per month due on the 1<sup>st</sup> of each month. Only one tenant is named on the tenancy agreement and this tenant allowed another tenant to occupy the rental unit with him sometime in August, 2009. The tenant paid a security deposit of \$225.00 on May 01, 2009.

The landlord's agent testifies that the tenant gave written notice to end the tenancy this notice was dated July 27, 2009 to end the tenancy for July 26, 2009. The tenant moved from the rental unit and his girlfriend stayed at the unit. The tenant moved back into the unit at the end of September, 2009. On August 18, 2009 the tenants' girlfriend gave the landlord notice to end the tenancy with a vacancy date of September 30, 2009. The tenants did not move from the rental unit on this date and did not pay rent for September and October, 2009 to an amount of \$1,100.00. The landlords issued a 10 Day Notice to End the Tenancy for unpaid rent on October 06, 2009. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 16, 2009. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlords also seek a loss of revenue for November, 2009.

The landlords have applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect as soon as possible.

## Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlords are entitled to recover rent arrears for September and October, 2009 of \$1,100.00. I also find that as the tenants are still residing at the rental unit the landlord is entitled to recover unpaid rent for



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November, 2009 of \$550.00 I order the landlords pursuant to s. 38(4) of the Act to keep the tenant's security deposit in partial payment of the rent arrears.

As the landlords have been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent for September, October and November, 2009	\$1,650.00
Less security deposit	(-\$225.00)
Total amount due to the landlord	\$1,475.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,475.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants.



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This order must be served on the Respondents and may be filed in the Supreme Court 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: November 10, 2009.

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Dispute Resolution Officer