

## **DECISION**

Dispute Codes      MNR, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession, a monetary order, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenants were served with a Notice to End Tenancy for non-payment of rent. The Tenants have not paid all the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

The Tenants vacated the rental unit on December 1, 2009.

The Landlords seek a monetary order for unpaid rent of \$100.00 for October, \$200.00 for heating oil used in October and November, and the \$50.00 filing fee. The Landlords claim the Tenants did not pay for the heating oil. The tenancy agreement requires the Tenants to pay 60% of the hydro and heating oil.

The Tenants acknowledged they owe the Landlords \$100.00 for the balance due in October 2009 rents.

The Tenants dispute the Landlords' claims for heating oil. They claim they had the oil tank filled in October of 2009, at a cost of \$1,000.00.

Neither party submitted evidence such as the heating oil bills or a “dip” to prove how much oil was in the tank at the start of the tenancy or at its end.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlords are entitled to an order of possession in these circumstances, the Tenants have vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenants have failed to pay rent of \$100.00 under the Act and tenancy agreement.

I dismiss the claim of the Landlords for heating oil. The Applicant Landlords in this matter had the obligation of proving the claims that have been made against the Respondent Tenants. The standard of proof required is the civil and administrative law standard, which is, claims must be proven on a balance of probabilities. I find the Landlords had insufficient evidence to prove the Tenants owed money for heating oil.

Therefore, I find the Landlords have established a total monetary claim of **\$150.00**, comprised of \$100.00 for rent and the \$50.00 filing fee for the claim. The Landlords are granted a monetary order in this amount against the Tenants. As the Landlords and Tenants have already dealt with the security deposit, there is no order for a set off.

The monetary order against the Tenants 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: January 06, 2010.

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Dispute Resolution Officer