

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

The parties agreed that they originally intended to enter into a “rent to own” type of arrangement whereby the tenants would pay \$850.00 per month which would be applied to a down payment and that after some period of time the landlord would transfer title to the tenants’ name. The parties further agreed that the agreement was never reduced to writing. The parties were unable to agree on specifics of the agreement and I determined that I had jurisdiction as although there was evidence of intent to enter into an agreement, I was persuaded that the parties indeed entered into a legally binding agreement.

At the hearing the parties agreed that the landlord was entitled to an order of possession effective July 31, 2010. This decision therefore only addresses the monetary portion of the landlord’s claim.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenants were obligated to pay \$850.00 per month and that they made the payments by directly deposits to a bank account. The parties further agreed that although the tenancy began on or about July 1, 2008, the tenants began making payments on April 4, 2008. The parties further agreed that the tenants did not pay a security deposit.

The landlord provided copies of his bank statements for an account which he testified was opened solely for the purpose of accepting rental payments. The landlord testified that with the exception of interest deposits, every deposit made to the account was made by the tenants and should be applied as a credit toward their rent.

<b>Date of payment</b>	<b>Amount of payment</b>	<b>Source of evidence</b>
April 4, 2008	\$ 400.00	Tenants' documents
April 15, 2008	\$ 450.00	Tenants' documents
May 3, 2008	\$ 400.00	Tenants' documents
May 18, 2008	\$ 450.00	Tenants' documents
June 22, 2008	\$ 400.00	Tenants' documents
June 30, 2008	\$ 186.03	Landlord's bank statement
June 30, 2008	\$ 600.00	Landlord's bank statement
July 11, 2008	\$ 400.00	Landlord's bank statement
July 31, 2008	\$ 300.00 *	Landlord's bank statement
August 4, 2008	\$ 400.00	Landlord's bank statement
August 5, 2008	\$ 350.00	Landlord's bank statement
August 15, 2008	\$ 420.00	Landlord's bank statement
August 29, 2008	\$ 425.00	Landlord's bank statement
September 15, 2008	\$ 425.00	Landlord's bank statement
September 30, 2008	\$ 425.00	Landlord's bank statement
October 15, 2008	\$ 425.00	Landlord's bank statement
October 31, 2008	\$ 425.00 **	Landlord's bank statement
November 14, 2008	\$ 425.00	Landlord's bank statement
November 28, 2008	\$ 425.00	Landlord's bank statement
December 15, 2008	\$ 425.00	Landlord's bank statement
December 31, 2008	\$ 425.00 ***	Landlord's bank statement
January 15, 2009	\$ 425.00	Landlord's bank statement
January 29, 2009	\$ 425.00	Landlord's bank statement
February 4, 2010	\$ 300.00	Parties agreed at hearing
February 16, 2009	\$ 200.00	Landlord's bank statement
February 18, 2009	\$ 425.00	Landlord's bank statement
March 11, 2009	\$ 425.00	Landlord's bank statement
March 25, 2009	\$ 800.00	Landlord's bank statement
April 23, 2009	\$ 425.00	Landlord's bank statement
May 5, 2009	\$ 425.00	Landlord's bank statement
June 3, 2009	\$ 850.00	Landlord's bank statement
July 7, 2009	\$ 300.00	Landlord's bank statement
July 31, 2009	\$ 300.00	Landlord's bank statement
August 4, 2009	\$ 400.00	Landlord's bank statement
August 5, 2009	\$ 350.00	Landlord's bank statement
August 31, 2009	\$ 150.00	Landlord's bank statement
August 31, 2009	\$ 273.23	Landlord's bank statement

September 1, 2009	\$ 600.00	Landlord's bank statement
September 28, 2009	\$ 180.00	Landlord's bank statement
October 5, 2009	\$ 700.00	Landlord's bank statement
November 3, 2009	\$ 400.00	Landlord's bank statement
November 6, 2009	\$ 200.00	Landlord's bank statement
November 9, 2009	\$ 250.00	Landlord's bank statement
November 13, 2009	\$ 400.00	Landlord's bank statement
December 1, 2009	\$ 450.00	Landlord's bank statement
December 16, 2009	\$ 400.00	Landlord's bank statement
December 31, 2009	\$ 300.00	Landlord's bank statement
January 21, 2010	\$ 400.00	Landlord's bank statement
February 4, 2010	\$ 300.00	Landlord's bank statement
February 26, 2010	\$ 360.00	Landlord's bank statement
February 26, 2010	\$ 20.00	Landlord's bank statement
March 16, 2010	\$ 240.00	Landlord's bank statement
March 26, 2010	\$ 380.72	Landlord's bank statement
April 5, 2010	\$ 800.00	Landlord's bank statement
<b>Total</b>	<b>\$21,434.98</b>	

\* While the landlord's bank statement only shows one deposit having been made on July 31, 2008, the tenants provided a copy of a deposit receipt showing that a deposit of \$425.00 was made on that date. Although it is possible that the tenants made a deposit which was not recorded, the tenants have the burden of proving that the landlord received their deposit. I find that the landlord did not receive the deposit shown on the tenants' deposit receipt and have not included that amount as a credit.

\*\* The tenants provided a receipt which shows that a deposit was made to the landlord's account on this date. The receipt is incomplete and does not show the amount which was deposited to the account. In the absence of evidence to the contrary, I have determined that there was one deposit made on October 31, 2008 in the amount of \$425.00.

\*\*\* On this date a \$450.00 was credited to the landlord's account and then debited the same day with a note that it is corrected. As the crediting and subsequent debiting of the same amount were due to a bank correction and left the landlord in the same position as prior to the credit having been applied, I have not included the \$450.00 payment as a credit on this list.

### Analysis

For the 22 month period of July 1, 2008 and May 30, 2010 inclusive the landlord was entitled to receive \$18,700.00 in rent. The evidence shows that the tenants paid \$21,434.98 in rent. I find that the tenants overpaid their rent by \$2,734.98.

### Conclusion

I find that the landlord has failed to prove that the tenants failed to pay part of the rent owing and accordingly I dismiss the landlord's claim. The landlord will bear the cost of his filing fee.

In support of the agreement of the parties I grant the landlord an order of possession effective July 31, 2010. This order must be served on the tenants. If the tenants fail to comply with this order, the order may be filed in the Supreme Court and enforced as an order of that Court.

As the parties agreed on an end of tenancy date I dismiss the tenants' claim.

Dated: July 19, 2010

---

Dispute Resolution Officer