



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and his agent. The tenants did not attend.

The landlord provided documentary evidence that he served the tenants with notice of this hearing on June 13, 2011 using a courier service. The landlord testified that he was actually at the rental unit and witnessed that the courier served the hearing documents. I accept that the tenants have been served sufficiently with notice of this hearing.

I also amend the landlord's application to include a request for an order of possession based on the tenants' failure to vacate the rental unit at the end of a fixed term tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for failing to leave the unit at the end of a fixed term tenancy; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on January 28, 2011 for a 2 month fixed term tenancy beginning on February 1, 2011 for the monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month. All parties initialled beside the clause that states "At the end of the fixed length of time the tenancy ends and the tenants must move out of the residential premises."

The landlord testified that the tenants paid \$1,130.00 for April use and occupancy only and that the tenants then failed to make any payments for use and occupancy until June 9, 2011, at which time the tenants paid \$600.00 for use and occupancy. The tenants made one more payment of \$1,000.00 for use and occupancy on June 28, 2011 but have made no additional payments.

Documentary evidence filed by the landlord indicates the tenants failed to pay full rent for the months of April, May, June and July 2011 and the landlord served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on May 24, 2011 (receipt submitted into evidence). A copy of the Notice that was dated June 24, 2011 with an effective vacancy date of June 7, 2011 due to \$1,480.00 in unpaid rent.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

Section 44 of the *Act* stipulates a tenancy ends when the fixed term agreement provides that the tenant will vacate the rental unit on the date specified as the end date of the tenancy. As the fixed term tenancy ended on April 1, 2011, I find the tenants have been overholding from that date forward; no tenancy agreement stands; and the tenants should have vacated the unit by that date.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The notice itself must comply with Section 52 which states the notice must be dated and signed by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and when given by the landlord be in the approved form.

In the notice issued by the landlord, he incorrectly dated the notice as June 24, 2011. However, based on the receipt from Canada Post, I accept the Notice was issued on May 24, 2011 and that the date of June 24, 2011 was an administrative error.

Section 68 states that if a notice to end tenancy does not comply with Section 52, the director may amend the notice if satisfied that: a) the person receiving the notice knew, or should have known, the information that was omitted (the date of May 24, 2011) and b) in the circumstances it is reasonable to amend the notice.

As the tenants knew when they entered into the agreement that the tenancy was for a fixed term and must vacate prior to April 1, 2011 and they paid the landlord partially for the month of April 2011 after overholding and subsequent to the notice to end tenancy have paid the landlord some funds towards this debt, I find the conditions have been met under Section 68 for me to amend the 10 Day Notice to End Tenancy for Unpaid Rent to have been issued on May 24, 2011.

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord and amended by my order. The notice is deemed to have been received by the tenants on May 29, 2011 and

the effective date of the notice is amended to June 9, 2011, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,320.00** comprised of \$2,270.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$625.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,695.00**. This order must be served on the tenants and 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: July 04, 2011.

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Residential Tenancy Branch