



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents was completed in person by the Landlord who personally served the Female Tenant on June 22, 2011 at 4:39 p.m. at the rental unit. The Landlord advised that he suspects the second named Tenant is the Female Tenant's on.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. The Tenants did not appear despite being served notice of the hearing in accordance with the Act.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy agreement was for a fixed term that began on February 1, 2011 and was set to expire on July 31, 2011. The Tenants paid a security deposit in the amount of \$462.00 and a pet deposit of \$230.00 on February 1, 2011. Rent was payable on the first of each month in the amount of \$925.00.

The Landlord testified that when the Tenants failed to pay rent for June 1, 2011 a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door June 9, 2011 at

1:40 p.m. by the Landlord. They took over as property managers and advised the Tenants in writing on June 8, 2011. The Tenants vacated the property on July 7, 2011 and returned the keys on that date. The Landlord has regained possession and is therefore withdrawing their request for an Order of Possession.

The Landlord is seeking the unpaid rent for June 1, 2011 in the amount of \$925.00 and loss of rent for July 2011 as they has still not re-rented the unit. They have a sign post out front of the building, they placed an advertisement on the internet around July 11, 2011 and they have rotating advertisements in the local newspaper. They have even lowered the requested monthly rent in hopes of securing new tenants as soon as possible.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

The evidence supports the Female Tenant was personally served with Notice of Dispute Resolution hearing documents and the male Tenant was not served these documents.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution hearing documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the Female Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required the monetary claim against the Male Tenant is dismissed without leave to reapply.

**Order of Possession** – The Landlord has withdrawn his application for an Order of Possession as the Tenants have vacated the rental unit.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$925.00 for June 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I find the Landlord has met the burden of proof to obtain a monetary order for loss of rent in the amount of **\$925.00**.

**Loss of rent** – The Landlord has claimed loss of rent for July 2011 given that the Landlord was not informed of the Tenants move out until July 7, 2011. The evidence supports that the Landlord has not been able to re-rent the rental unit for July 2011 which resulted in the Landlord suffering a loss as a direct result of the Tenants' failure to comply with section 26 of the *Act*. Based on the aforementioned I find that the Landlord has succeeded in proving his loss, as listed above, and I approve his claim for **\$925.00** of loss of July 2011 rent.

The Landlord has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid Rent for June 1, 2011	\$925.00
Loss of Rent for July 2011	925.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	<b>\$1,900.00</b>
Less Security & Pet Deposits of \$692.00 plus interest of \$0.00	-692.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,208.00</b>

### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,208.00**. This Order is legally binding and must be served on the respondent Tenants.

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 19, 2011.

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Residential Tenancy Branch