



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, a late fee and for money owed for damage or loss, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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 Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

This month to month tenancy began on January 31, 2011, monthly rent is \$665.00 and the tenants paid a security deposit of \$332.50 on January 31, 2011.

The landlord's agent gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 2, 2011, by posting on the door. The Notice stated the amount of unpaid rent as of June 1, 2011 was \$665.00. The effective vacancy date was June 15, 2011.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlord's total monetary claim is \$1,079.50, which includes unpaid rent of \$665.00 for June, \$32.00 for late fees for June, \$332.50 for possible damages to the rental unit and the filing fee of \$50.00.

During the course of the hearing the parties agreed that the tenants had vacated the rental unit and that the landlord no longer requested an order of possession.

The landlord testified that the tenants have not paid the monthly rent \$665.00 for June and the tenant acknowledged that June rent remained unpaid.

The landlord stated that the tenant owed \$2.00 per day as late fees per the tenancy agreement.

The landlord testified that the claim of \$332.50 was for possible damages after the tenants vacated.

The tenant testified that he did not withhold rent, but that he lost his job and didn't have the money to pay rent. He further stated that the tenants were intending on moving out by the effective day of the Notice, but that the condition of the parking lot prevented them from so doing.

### Analysis

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the tenants have not paid the outstanding rent owed to the landlord and failed to apply to dispute the Notice, and therefore, are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord has established a total monetary claim of **\$740.00** comprised of unpaid rent of \$665.00, a \$25.00 late fee, the maximum allowed under the Residential Tenancy Regulation 7 (1) (d) and the \$50.00 fee paid by the landlord for this application.

I **dismiss** the landlord's claim for \$332.50, as the landlord has not established an incurred loss.

At the landlord's request, I order that the landlord retain the security deposit of **\$332.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$407.50**.

I am enclosing a monetary order for \$407.50 with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this monetary order.

#### Conclusion

The Landlord is granted a monetary order for \$407.50.

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 08, 2011.

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Residential Tenancy Branch