



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Preliminary Issues

The Landlord affirmed that they were unable to serve the Tenants with copies of their amended application. Service of the original application for dispute resolution and the hearing documents by the Landlord to each Tenant was done in accordance with section 89 of the *Act*, sent via registered mail on August 19, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. Each Tenant is deemed to be served the hearing documents the fifth day after they were mailed in accordance with section 90(a) of the *Act*. Based on the Landlord's affirmation I find that each Tenant has been sufficiently served notice of the Landlord's original application in accordance with section 89 of the *Act*.

As per the above, the Landlord's amended application for dispute resolution has not been served upon either Tenant and does not meet the service requirements stipulated in section 89 of the *Act*. In order to proceed with an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's amended claim, with leave to reapply. Accordingly, the hearing proceeded based on the Landlord's original application which I found to have been served in accordance with *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; to keep all or part of the pet and or security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord's amended application been served upon the Tenant's in accordance with the *Residential Tenancy Act*?
2. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, has the Landlord met the burden of proof to be awarded an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?
4. If so, has the Landlord met the burden of proof to be awarded monetary compensation, pursuant to section 67, for losses incurred as a result of that breach?

Background and Evidence

The Landlord confirmed the parties entered into a fixed term tenancy agreement that began on June 1, 2011 and was set to expire August 23, 2011. Rent was payable on the first of each month in the amount of \$1,550.00 and on May 20, 2011 the Tenants paid \$775.00 as the security deposit. A move in inspection report was completed May 28, 2011 and the move out inspection report was completed August 23, 2011. Both inspections were attended by the Landlord and female Tenant.

The Landlord confirmed the Tenants provided written notice to end their tenancy as of August 31, 2011 and vacated the property as of August 23, 2011. The Landlord withdrew his request for an Order of Possession as they regained possession August 23, 2011. The rental unit was re-rented as of September 1, 2011.

The Landlord is seeking compensation of \$1,575.00 which is comprised of \$1,550.00 for unpaid rent for August 2011 plus \$25.00 late payment fee.

Analysis

The Landlord claims for unpaid rent of \$1,550.00 for August 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. Accordingly I award the Landlord a monetary claim in the amount of **\$1,550.00**.

The Landlord is seeking \$25.00 for late payment fees for August 2011 as provided for in # 3.03 of the tenancy agreement which is in compliance with section 7 of the Residential Tenancy Regulation. Accordingly I award the Landlord the late payment fee of **\$25.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,625.00** (\$1,550.00 + \$25.00 + \$50.00). This Order is legally binding and must be served upon 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: September 21, 2011.

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Residential Tenancy Branch