



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNDC, MNSD and FF  
Tenants: CNR

### **Introduction**

These applications were brought by both the landlord and the tenants.

By application of November 9, 2011, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on October 12, 2011 by posting on the tenant's door. The landlord also sought a Monetary Order for unpaid, loss or damage under the legislation or rental agreement, late fees, recovery of the filing fee for this proceeding and authorization to set off the balance owed against the security deposit.

By application October 31, 2011, the tenants seek to have the same Notice to End Tenancy set aside.

Despite having made application, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, their application is dismissed without leave to reapply and the hearing proceeded on the landlord's application

### **Issue(s) to be Decided**

This matter requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order and authorization to set off the amount owed against the security deposit.

### Background and Evidence

This tenancy began on September 5, 2008. Rent is \$999 per month and the landlord holds a security deposit of \$499 paid on September 5, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after the tenants had a rent shortfall of \$86 for the October rent. The landlord had also applied for October, November and December late fees of \$25 each.

When asked what explanation the tenants had given for the rent shortfall for October 2011, the landlord stated that the charge had arisen when the tenants had been charged that amount against their October rent when they had been found placing a couch with the disposal bin in September.

He stated that rent is paid by automatic deposit and the rent was paid in full for September, October and November.

The landlord stated that the fee for placing the couch with the disposal bin was \$100 but claims \$86 as the tenants had an accumulated credit of \$14 on their account.

### Analysis

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent by issuing a 10-day Notice to End Tenancy on any day after the rent is due.

However, this section of the *Act* does not make provision for issuance of the same notice for a surcharge imposed for a breach of the *Act*. As defined in the *Act*:

“Rent means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities....”

Therefore, I must set aside the Notice to End Tenancy of October 12, 2011 on the grounds that the amount claimed is not rent..

However, I accept the evidence of the landlord with respect to the improper use of the garbage disposal bin and award the \$86 balance remaining on that claim. As the application was only marginally related to the award, I find that the filing fee should be split equally between the parties.

### Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for \$111.00 consisting of \$86 for the misuse of the garbage bin and \$25 for one-half of the filing fee for this proceeding.

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: November 21, 2011.

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Residential Tenancy Branch