



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, 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, damage to the rental unit, site or property, and recovery of the filing fee.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, damage to the rental unit, site or property and recovery of the filing fee?

### Background and Evidence

The Landlord and Tenants agree that they have a month to month tenancy agreement which commenced on May 01, 2010. The parties agree that the rent is \$1300.00 per month, due on the first of the month, and that the Landlord has a security deposit of \$500.00. Tenant ME confirmed that she is still in the rental unit at the time of this hearing.

The Landlord stated that the Tenants issued him an NSF cheque for July 2011 rent and have failed to pay the rent for all subsequent months. The Landlord is seeking rent for July, August, September, October, November, and December 2011. The Landlord states that he issued a 10 Day Notice to End Tenancy to the Tenants on November 05, 2011 and put the Notice in their mailbox with a witness present. The Landlord states that the Tenants received the Notice but the Tenants only paid \$300.00 cash in response. The Landlord states that the Tenants promised to move out by November 30, 2011, but failed to do so and have not paid the outstanding rent. The Landlord states that the outstanding rent to date is \$7,800.00 minus the \$300.00 paid in November 2011. As a result, the Landlord states the Tenants owe a balance of \$7,500.00. The Landlord stated that he is concerned about damage to the rental unit, but is not sure of the amount at this time and what his claim for that may be, as the Tenants have not moved out yet.

The Tenants confirmed that the Landlord personally served them with a 10 Day Notice to End Tenancy by leaving a copy in their mailbox, however, they were away at the time so they stated that they received shortly after November 05, 2011. The Tenants confirmed that they did not file an Application to dispute the Notice within 5 days and that they have not moved out of the rental unit. Tenant ME agreed at the hearing that they do owe the Landlord a total of \$7,500.00 for unpaid rent for July, August, September, October, November, and December 2011 and that the only amount paid during that time was \$300.00 cash in November 2011. Tenant ME stated that she has had difficulty paying the rent due to being cut off her disability payments and having to look for a job, and due to her other roommates moving out. The Tenants stated that they wish to remain in the rental unit at this time as they have dogs and it is difficult to find another place that will take dogs. The Tenants stated they had a verbal agreement with the Landlord to allow them to stay until November 30, 2011, as a result they stated they feel the Landlord should be required to extend this further as they wish to remain in the rental unit.

The Landlord stated that he wants the Tenants out of the rental unit as the rent arrears are too excessive and the Tenants have broken their promises to him. The Landlord requested an order of possession and a monetary order for the outstanding amounts.

### Analysis

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

I accept the Landlord's evidence that the Tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 05, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served on the Tenants on November 05, 2011 by being placed in their mailbox, it was deemed to have been served within three days. The Notice states that the Tenants had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end. The Tenants did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was November 13, 2011. The Landlord indicated that the Tenants had until November 15, 2011 to vacate the premises, however based on the service method this date corrects to November 18, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenants did not file an Application to dispute the Notice, and the Tenants have failed to vacate the premises as required by the Notice.

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 November 18, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenants agrees that they owe the Landlord a total of \$7,500.00 for unpaid rent for the months of July, August, September, October, November and December 2011. I find it appropriate to amend the Landlord's Application to state the correct amount of rent arrears, as agreed by the Tenants at the hearing. I find that the Landlord has established a monetary claim of \$7,500.00.

I do not find that the Landlord is entitled to any damages costs at this time, as the Landlord has indicated that he is not sure of what amount he may be owed for damages to the rental unit as the Tenants have not yet moved out. As a result I find it is premature for the Landlord to claim damages may be owed to him by the Tenants, and I dismiss this portion of the Landlord's claim with leave to reapply.

As the Landlord has mostly succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$7,550.00.

The Landlord holds the Tenants' security deposit of \$500.00. I order that the Landlord retain the security deposit of \$500.00 in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$7,050.00**.

### Conclusion

The Landlord's claim for damages to the rental unit is dismissed with leave to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenants. This order must be served on the Tenants and may be filed in Supreme Court.

I find that the Landlord is entitled to \$7,550.00 comprised of unpaid rent and the filing fee. As I have ordered that the Landlord retain the security deposit of \$500.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenants in the amount of **\$7,050.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: December 06, 2011.

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Residential Tenancy Branch