



# 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 Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the female Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail November 18, 2011. Mail receipt numbers were provided in the Landlord's testimony.

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

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord affirmed that they entered into a written fixed term tenancy agreement that began on August 24, 2011 that was set to expire on June 22, 2012. Rent was payable on the first of each month in the amount of \$700.00 and August 24, 2011 the Tenants paid \$350.00 as the security deposit plus a \$150.00 cleaning deposit.

The Landlord advised that when the Tenants failed to pay the November 1, 2011 rent a 10 Day Notice to end tenancy was posted to the Tenants' door on November 4, 2011 for \$700.00 in unpaid rent. They attempted on several occasions to schedule a move out inspection with the Tenants but the Tenants always cancelled. The Tenants vacated the property on November 18, 2011 and did not leave a forwarding address.

The Landlord confirmed he has regained possession of the unit and wished to withdraw his request for an order of possession. He also requested to amend his application so that they are allowed to retain the \$350.00 security deposit plus the \$150.00 cleaning deposit as full satisfaction of their claim for \$700.00 of unpaid rent as he is sure he won't be able to collect the balance from the Tenants.

### 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.

**Claim for unpaid rent** - The Landlord claims for the total unpaid rent of \$700.00 for November 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned 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.

At the request of the Landlord, I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit and cleaning deposits of \$500.00 (\$350.00 + 150.00) plus interest of \$0.00 as full satisfaction of the Landlord's claim which includes his request to recover the filing fee.

### Conclusion

The Landlords have been successful with their application and I HEREBY ORDER the Landlords to retain the security deposit and cleaning deposit as full satisfaction of their claim.

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 02, 2011.

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Residential Tenancy Branch