



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence during the hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

Both parties agree that this month to month tenancy started on June 17, 2010. The tenant pays a monthly rent of \$960.00 which is due on the first day of each month. The tenant paid a security deposit of \$480.00 on June 17, 2010.

The landlord attending testifies that the tenant failed to pay rent for December, 2011 and January, 2012 and a 10 Day Notice to End Tenancy was served to the tenant on January 04, 2012 in person. This notice indicates that the tenant owes rent of \$1,920.00 due on January 01, 2012. The notice states the tenant has five days to pay the outstanding rent or dispute the Notice or the tenancy will end on January 14, 2012.

The landlord agrees the tenant paid \$500.00 on January 13, 2012 and \$500.00 on January 22, 2012. The landlord attending agrees the receipts provided for these payments did not indicate that the landlords were accepted this rent for use and occupancy only.

The landlord testifies that he spoke to the other landlord late last night and asked him to notify the landlord attending if the tenant paid any more rent. The landlord attending states he has not heard from the other landlord and attempts to contact him during the hearing were unsuccessful.

The tenant testifies that she has paid all the rent arrears. The tenant agrees she paid \$500.00 on January 13 and \$500.00 on January 22, 2012 and testifies that she paid another \$1,880.00 in cash to the other landlord on the morning of the hearing, February 02, 2012. The tenant testifies the other landlord did not notify the tenant that he was accepting the payments for use and occupancy only but rather informed her that her tenancy could continue. The tenant states to date she has paid all the outstanding rent including rent for February, 2012. The tenant was allowed to fax in copies of the rent receipts for confirmation of the rent paid today. These receipts appear to be legitimate receipts signed by the other landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

When rent is not paid on the day it is due a landlord is entitled to serve a tenant with a 10 Day Notice to End Tenancy. If the landlord accepts any rent after the five days indicated on the Notice the landlord must inform the tenant in writing that the money has been accepted for use and occupancy only and does not reinstate the tenancy.

As the landlord agrees they did not do this when they accepted rent from the tenant on three separate occasions the landlords have effectively re-instated the tenancy. Therefore the landlords' application for an Order of Possession cannot succeed and is dismissed.

The tenant has proved evidence to show that she has now paid all the outstanding rent plus rent for February, 2012, consequently the landlords' application for a Monetary Order to recover unpaid rent is dismissed.

With regards to the landlords application to keep the security deposit; as the tenancy has been reinstated and will continue at this time and as all the rent arrears have been paid the landlords are not entitled to use the security deposit and this deposit must continue to be held in trust by the landlords until such a time as the tenancy ends. Therefore, this section of the landlords claim is dismissed.

However, the landlords are entitled to a Monetary Order to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*, as at the time the landlords filed their application the tenant did owe rent to the sum of \$1,920.00.

### Conclusion

The landlords' application for an Order of Possession, a Monetary Order for unpaid rent and an Order to keep the security deposit are all dismissed without leave to reapply.

I HEREBY FIND in favor of the landlords' claim to recover the filing fee. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: February 02, 2012.

---

Residential Tenancy Branch