



# 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 Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

I note that toward the end of the hearing the male Tenant appeared, became rude and belligerent, and used foul and abusive language. The Tenants left the hearing prior to its conclusion.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

The Agent for the Landlord testified that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on January 7, 2012, by posting the Notice to the door. A witness for the Landlord has signed a proof of service form indicating he witnessed the service on January 7, 2012, as described by the Agent.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Landlord claims in the Notice that the Tenants failed to pay \$3,500.00 in rent, dating back to June of 2011.

The parties agree that monthly rent for the rental unit was initially \$1,100.00, although the Tenants began using a different portion of rental unit and the rent was reduced to \$900.00 per month.

The Landlord submitted an accounting that the Tenants owe the following rents: \$900.00 for June, \$500.00 for August, \$100.00 for September, \$900.00 for October \$200.00 for December all in 2011, and \$900.00 for January and \$900.00 for February of 2012.

The Landlord submits the Tenants paid a security deposit of \$180.00. In evidence the Landlord has provided a receipt, signed by the Tenants, indicating they paid \$180.00 for the security deposit.

The Tenants dispute the amount of the security deposit and say they have paid \$550.00 for the deposit.

The Tenants do not dispute they owe the Landlord rent, however, they dispute the amount of rent due. The female tenant testified that the Landlord does not give out receipts and the rents were paid in cash by the male Tenant to the Landlord. The Tenants argue they owe \$250.00 less than what the Landlord claims.

The Tenants state they will pay the Landlord the amount due, but are waiting for cheques from various sources.

The Tenants also dispute having been served with the 10 day Notice to End Tenancy. They say they did not receive it until the Landlord gave them the evidence for this hearing. They say at the time the Notice was served their friends were in the rental unit and they reported hearing banging on the door of the rental unit.

### Analysis

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

Based on the evidence of the Landlord, I find that the Tenants have been duly served with the 10 day Notice to End Tenancy on January 7, 2012, by posting on the door of the rental unit. Under the Act the Tenants were deemed served on January 10, 2012, and therefore, the effective date of the Notice was January 20, 2012.

I accept the evidence of the Landlord as to rents owed, and I find that the Tenants owe the Landlord \$4,500.00 in rents, including the rent due for February 2012. I also accept the evidence of the Landlord that the Tenants paid a security deposit of \$180.00. I find the Tenants had insufficient evidence to prove they owed a different amount for rent or had paid more for their security deposit.

The Tenants have not paid the outstanding rent owed to the Landlord and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$4,450.00** comprised of \$4,400.00 owed in rents and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of \$180.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,270.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as provided under the Act, and 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 07, 2012.

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Residential Tenancy Branch