



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed for compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has a valid 10 Day Notice to End Tenancy for unpaid rent been issued in accordance with sections 46 and 52 of the *Residential Tenancy Act*?
2. Have the Tenants breached the *Residential Tenancy Act*, Regulation and/or tenancy agreement?
3. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on October 1, 2010 and switched to a month to month tenancy after September 30, 2011. Rent is payable on the first of each month in the amount of \$995.00 and on September 30, 2010 the Tenants paid \$487.50 as the security deposit.

The Landlord affirmed that the Tenants were issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on March 2, 2012 and they have not paid rent for March 2012, April, 2012, and had a previous accumulated unpaid balance of \$1,780.00 as of February 2, 2012. The Landlord confirmed a payment of \$565.00 was received February 10, 2012, prior to issuing the 10 Day Notice.

The Landlord advised she is seeking an Order of Possession for as soon as possible and a Monetary Order for the unpaid rent and late fees up to the end of April 2012.

The Tenant affirmed they received the 10 Day Notice on March 2, 2012, that they did not submit documentary evidence in their defense, and alleged that he had a written agreement which entitled him to make payments towards past unpaid rent. The Tenant also argued that he has attempted to pay his rent but that he can never get in touch with the Landlord. He noted that in January 2012 the Landlord had been issued an Order of Possession and that he was told to ignore these previous documents.

The Landlord confirmed they had been issued a previous Order of Possession and that after serving it she had inadvertently re-instated the tenancy by issuing additional Notices.

### 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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

**Order of Possession** – I have reviewed the aforementioned and the documentary evidence and I accept that the Tenants have been served with a 10 Day Notice to end tenancy as declared by the Landlord. The notice was received by the Tenants on March 2, 2012, and the effective date of the notice is March 12, 2012 in accordance with section 26 of the *Act*. I accept the evidence before me that the Tenants have failed to dispute the Notice and failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 the effective date of the Notice, **March 12, 2012**, and I hereby grant the Landlord an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent comprised of accumulated unpaid rent up to February 10, 2012 of \$1,215.00 (\$1,760.00 less February 10, 2012 payment of \$565.00) plus \$995.00 for March 1, 2012 plus \$20.00 late payment fee for March 2012 which is provided for in section 3(a) of the tenancy agreement. The total amount of unpaid rent and late fees claimed prior to the end of the tenancy is \$2,230.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

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. I find the Landlords have met the burden of proof and I award them a monetary claim of **\$2,230.00** for unpaid rent.

**Loss of rent** – The Landlord is seeking loss of rent for April 2012 given that the Tenants have failed to pay April 1, 2012 rent and are still occupying the unit. Therefore the Landlord will not regain possession until to be able to re-rent it until after service of the Order of Possession.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$995.00** for loss of April 2012 rent.

**Filing Fee** - The Landlords have succeeded with their application and therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent up to March 31, 2012	\$2,230.00
Loss of Rent April 2012	995.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,275.00</b>
<b>LESS:</b> Security Deposit \$487.50 + Interest 0.00	<u>-487.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$2,787.50</u></b>

Conclusion

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord's decision will be accompanied by a Monetary Order for **\$2,787.50**. This Order is legally binding and must be served upon the Tenants.

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: April 12, 2012.

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Residential Tenancy Branch