



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPB MNRMNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession based on their tenancy agreement 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 Tenant for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, served personally to each Tenant on April 10, 2012. The Landlord noted her clerical error in writing the service date of March 10, 2012 instead of April 10, 2012 on the document she had the Tenants sign acknowledging receipt of the hearing documents. Based on the submissions of the Landlord I find each Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the *Act*.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Tenants despite them being served notice of this proceeding in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord 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 the Tenants have occupied the rental unit since March 1, 2012 and that they entered into a fixed term tenancy agreement that began on March 15, 2012 and is set to end on April 30, 2012 at which time the Tenants are required to vacate the unit. Rent is payable on the last day of each month for the following month in the amount of \$1,000.00 and on February 13, 2012 the Tenants paid \$500.00 as the

security deposit. The move in condition inspection report form was completed and signed on March 1, 2012.

The Landlord advised that when the Tenants failed to pay the March 31, 2012 rent a 10 Day Notice was posted to their door. The Tenants have since paid rent towards the March 31, 2012 rent with \$500.00 paid on April 8, 2012 and \$300.00 paid on April 20, 2012 leaving an outstanding balance due of \$200.00. The Landlord stated the Tenants requested that this outstanding balance be withheld from their security deposit.

The Landlord confirmed she is seeking an Order of Possession for April 30, 2012 based on the tenancy agreement and an order allowing her to keep the \$200.00 rent shortfall and the \$50.00 filing fee from the Tenant's security deposit.

### Analysis

Section 55 (2)(C) of the Act stipulates that a landlord may request an order of possession of a rental unit by making an application for dispute resolution if the tenancy agreement is a fixed term tenancy agreement that provides that a tenant will vacate the rental unit at the end of the fixed term.

**Order of Possession** – After careful review of the documentary evidence which included, among other things, a copy of the tenancy agreement, I find that the Landlord has met the requirements of section 55(2)(c) of the Act as the tenancy agreement indicates the tenancy ends April 30, 2012 and the tenants must vacate the unit. Accordingly, I approve the Landlord's request for an Order of Possession.

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 unpaid rent of \$200.00 (\$1,000.00 - \$500.00 - \$300.00) that was due on March 31, 2012. Pursuant to section 26 of the *Act* 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 last day of each month. I find the Landlords has met the burden of proof and I award her a monetary claim of **\$200.00** for March 31, 2012 unpaid rent.

The Landlord has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is 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 Tenant's security deposit plus interest as follows:

|   |                         |
|---|-------------------------|
| Unpaid rent for March 31, 2012                          | \$ 200.00               |
| Filing Fee  | <u>50.00</u>            |
| <b>SUBTOTAL</b>   | \$ 250.00               |
| <b>LESS:</b> Security Deposit \$500.00 + Interest 0.00  | <u>-500.00</u>          |
| <b>Offset amount SECURITY DEPOSIT HELD<br/>IN TRUST</b> | <b><u>\$ 250.00</u></b> |

The balance of the deposit held in trust by the Landlord is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

#### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **April 30, 2012, at 1:00 p.m., after service on the Tenants**. This Order is legally binding and must be served upon the Tenant.

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 25, 2012.

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Residential Tenancy Branch