



# 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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the tenants indicated they had sent a submission to the Branch via fax this morning. As service of their submission was late and not served upon the landlord, I informed the parties I would not accept the tenants' documentation but that I would permit the tenants to make their submission verbally during the hearing. The tenants were provided that opportunity and read from their prepared submission.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent for April 2012?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced October 1, 2009 and the tenants paid a \$497.50 security deposit. The tenants are required to pay rent of \$995.00 on the 1<sup>st</sup> day of every month. Starting May 1, 2012 the rent was to increase by 4.3%.

The tenants failed to pay rent for April 2012 and on April 4, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenants' door. The Notice indicates the tenants failed to pay rent of \$995.00 on April 1, 2012. The tenants did not pay the outstanding rent or dispute the Notice.

The landlord has applied to recover unpaid rent for April 2012 and retain the security deposit. The landlord also requested an Order of Possession effective as soon as possible.

The tenants acknowledged that they did not pay rent for April 2012 and received the 10 Day Notice as submitted by the landlord. The tenants explained that they have endured financial hardships and ill health in recent years and that their unit was broken into on April 17, 2012 and their rent money stolen.

Both parties agreed that the landlord has not collected rent from the tenants for the month of May 2012.

The landlord provided photographs of the 10 Day Notice posted on the tenant's door and registered mail receipts.

### Analysis

The Act requires that a tenant pay rent when due, in accordance with the terms of their tenancy agreement, unless the tenant has the legal right to withhold rent. In this case I was not presented with any evidence the tenants had a legal right to withhold rent. While sympathetic to the tenants' difficult life circumstances of late, the Act does not provide an exemption to the requirement to pay rent when due.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I find the landlord entitled to recover unpaid rent of \$995.00 for April 2012. I further award the filing fee paid for this application to the landlord. I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order in the amount of \$547.50 [\$995.00 + \$50.00 - \$497.50]. The landlord remains at liberty to make a subsequent application for any loss of rent or other damages incurred after April 2012.

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$547.50 to serve 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: May 03, 2012.

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Residential Tenancy Branch