



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MT, CNR

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenants have applied for More Time to cancel a Notice to End Tenancy and to cancel the 10 Day Notice to End Tenancy. The landlord has applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants, the landlord and the landlord's agent attended the conference call hearing. The parties attending gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to more time to cancel the 10 Day Notice?
- If so can the 10 Day Notice to End Tenancy be cancelled?
- 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 tenants security deposit?

### Background and Evidence

Both parties agree that this tenancy started on January 06, 2010. Rent for this unit is now \$940.00 per month and is due on the first day of each month in advance. The tenants paid a security deposit of \$462.50 on January 06, 2010.

The landlord testifies that the tenants failed to pay rent for April, 2012 of \$940.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 04, 2012. This Notice was served in person to one of the tenants on April 04, 2012. This Notice states that the tenants owe rent of \$940.00. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 14, 2012. The tenants paid \$240.00 on April 12, 2012. The landlord testifies that the tenants were informed that if this is the only amount they will pay that it does not reinstate the tenancy. The tenants did not pay the balance owed of \$700.00 and the tenants did not dispute the Notice within five days. Since that time the tenants have also failed to pay rent for May, 2012. The landlord seeks to amend their application to include outstanding rent for May, 2012. The total amount of outstanding rent is now \$1,640.00.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days of service.

The tenant attending testifies that they did not file their application within the five allowable days as they were hoping to get alternative housing. However, this did not transpire so the tenants filed their application to cancel the notice on April 13, 2012.

Analysis

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.*

I am satisfied with the evidence before me that the tenants have failed to pay rent for April and May, 2012. I have allowed the landlord to amend their application to include unpaid rent for May, 2012 as the tenants continue to live in the rental unit and would be aware that rent was due for May, 2012. Therefore, I find the landlord is entitled to recover rent arrears to the sum of **\$1,640.00** pursuant to s.67 of the Act.

I order the landlord, pursuant to s. 38(4)(b) of the Act, to keep the tenants' security deposit of **\$462.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,640.00
Less Security Deposit	(-\$462.50)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$1,227.50</b>

The tenants have applied for more time to cancel the 10 Day Notice to End Tenancy. The Notice was served to the tenants in person on April 04, 2012. The tenants did not apply to cancel the Notice until April 13, 2012. Section 66 of the Act provides for extending the time limit to file an application to dispute a notice. The director may extend a time limit established by this Act only in exceptional circumstances. The

tenants have not provided any evidence to warrant exceptional circumstances which would allow the Director to extend the time limit beyond the five days stated on the 10 Day Notice. Consequently, this section of the tenants' application has no merit and is dismissed.

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 and grant the landlord an order of possession pursuant to section 55 of the *Act*.

#### Conclusion

I HEREBY FIND in favor of the landlords claim for unpaid rent. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,227.50**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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 10, 2012.

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Residential Tenancy Branch