



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNSD MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on April 30, 2012. Mail receipt numbers were provided in the Landlords' evidence. Based on the Landlords' submissions I find that each Tenant was sufficiently served notice of this proceeding in accordance with the Act.

The Landlord's Agent 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. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order?

### Background and Evidence

The Agent affirmed rent was payable on the first of each month in the amount of \$2,550.00 in accordance with the fixed term tenancy agreement that was provided in evidence. The agreement indicates the tenancy started May 1, 2011 and was to switch to a month to month tenancy or another fixed term after April 30, 2012 and on April 21, 2011 the Tenants paid a security deposit of \$1,275.00.

The Agent referenced the 10 Day Notice that was provided in evidence and confirmed that it was served personally to F.B. on April 18, 2012 as supported by the proof of service document provided in evidence. She also noted the tenant ledger which

indicates that as of April 19, 2012 there was an accumulated unpaid balance owing of \$4,525.00 which increased to \$7,075.00 once May 01, 2012 rent was posted. She said an amended application had been filed to increase the amount of the monetary claim to include May's rent as the Tenants remain in the unit to this day.

### 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.

**Order of Possession** - I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, April 28, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlords' request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for accumulated unpaid rent of \$4,525.00 up to April 19, 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 first of each month. I find the Landlords have met the burden of proof and I award them a monetary claim of **\$4,525.00**.

**Loss of rent** – As noted above this tenancy ended April 28, 2012, in accordance with the 10 Day Notice and the Landlord has applied for loss of rent for May 2012 given that the Tenants are still occupying the unit. The Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for the full month of May 2012.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$2,550.00** for loss of May 2012 rent.

The Landlords have succeeded with their application; 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 April 19, 2012	\$4,525.00
Loss of rent for May 2012	2,550.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$7,125.00
<b>LESS:</b> Security Deposit \$1,275.00 + Interest 0.00	<u>-1,275.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$5,850.00</u></b>

Conclusion

I HEREBY FIND 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 will be issued a Monetary Order for **\$5,850.00**. 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: May 22, 2012.

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Residential Tenancy Branch