



# 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 Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the 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 Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on May 30, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant to be sufficiently served notice of this proceeding.

The parties appeared at the teleconference hearing and the Tenant acknowledged receipt of the hearing documents, the 10 Day Notice, and the evidence submitted by the Landlord. Each party gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. 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. Is the Landlord entitled to an Order of Possession for the rental unit?
2. If the Landlord entitled to a Monetary Order?

### Background and Evidence

The parties agreed they entered into a written fixed term tenancy that began on April 1, 2010 and switched to a month to month tenancy after March 31, 2011. The Tenants were allowed to occupy the rental unit as of March 15, 2010 and paid a pro-rated amount of rent for March 2010. Rent is payable on the first of each month in the amount of \$1,173.00 plus \$55.00 for parking for a total amount of \$1,228.00 and on February 24, 2010 the Tenants paid \$550.00 as the security deposit.

The Landlord submitted that the Tenants continue to be late with their rent payments and seem to be always two months late despite the Landlord's attempts to work with the Tenants to remedy this situation.

The Tenant acknowledged receipt of the 10 Day Notice that was placed in his mail box on May 14, 2012, and confirmed he has been late paying his rent. He advised he made a payment of \$2,200.00 on Friday June 15, 2012. He requested that the Landlord give him one more opportunity if he agreed to pay the balance owing of \$394.00 today and his July 1<sup>st</sup> rent on time.

The Landlord confirmed they received \$2,200.00 from the Tenant and stated they issued him a receipt for "use and occupancy only". After considering how long these Tenants have been late they wished to proceed with their request for an Order of Possession for as soon as possible and a Monetary Order.

### 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 Landlord has 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 in full 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, May 24, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord confirmed receiving a payment for use and occupancy only in the amount of \$2,200.00 which included the \$1,366.00 that was due by May 1, 2012 plus \$834.00 for June 2012 use and occupancy.

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. That being said, the rent for May 1, 2012 has now been paid.

**Loss of rent** – As noted above this tenancy ended May 24, 2012, in accordance with the 10 Day Notice. The Landlord is seeking loss of rent for June 2012 given that the Tenant has failed to pay June 1, 2012 rent and is 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 June 2012.

Based on the aforementioned the Landlords received \$834.00 towards June 2012 use and occupancy leaving an outstanding balance due of \$394.00. Accordingly, I award the Landlord **\$394.00** for loss of June 2012 rent.

The Landlord has succeeded with their 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 Tenants' security deposit plus interest as follows:

Loss of rent for June 2012	394.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 444.00</b>
<b>LESS:</b> Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
<b>Offset amount of Security Deposit in Trust</b>	<b><u>\$ 106.00</u></b>

The balance of **\$106.00** of the deposit currently 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 **two days after service on the Tenants**. 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: June 19, 2012.

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Residential Tenancy Branch