



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; an Order of possession because the tenants have breached an agreement with the landlord; 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 and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord 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

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to an Order of Possession because the tenants breached an agreement with the landlord?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This tenancy started on August 15, 2011. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,250.00 per month. Rent is due on the first of each month. The tenants paid a security deposit of \$625.00 on July 29, 2011.

The landlord's agent testifies that the tenants failed to pay all the rent for May, 2012. There is an outstanding balance for May of \$604.42. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2012. This was handed to one of the tenants in person on May 02, 2012. This Notice states that the tenants owe rent of \$604.42. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 13, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants only paid a partial rent for June, 2012. This leaves an unpaid balance for June of \$625.00. The amount of \$625.00 paid on June 01, 2012 was accepted for use and occupancy only. The total amount of outstanding rent is now \$1,229.42. The parties agree that one of the tenants TM moved from the rental unit on June 01, 2012 but still has some belongings in the rental unit.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have applied for an Order of Possession to because the tenants breached a term of the tenancy agreement which notifies the tenants that rent must be paid on the first day of each month and the landlords seek an Order of Possession for unpaid rent. The landlord requests the Order of Possession to be effective from June 15, 2012.

The tenant attending testifies that her rent was paid on time and the other tenant TM failed to pay the landlord her share of the rent. The tenant does not dispute that the landlord has a claim for unpaid rent but testifies that she had been unaware that her co-

tenant had not paid her share of the rent. The tenant testifies that her co-tenant did not give her a copy of the 10 Day Notice to End Tenancy either.

### 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.*

The Residential Tenancy Policy Guidelines #13 states that Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Consequently, I am satisfied with the undisputed evidence before me that the tenants owe rent for May and June, 2012 to the sum of \$1,229.42. The landlord is entitled to a Monetary Order to recover this rent arrears 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 **\$625.00** 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 landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,229.42
Less Security Deposit	(-\$625.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$654.42</b>

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenants on May 02, 2012. When one tenant accepts the Notice in person then both tenants are deemed to have been served the Notice if both tenants' names are on the Notice. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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*. The tenant attending and the landlord state that the other tenant TM has moved out but continues to have some belongings in the rental unit. Therefore the Order of Possession will remain in both tenants' names.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$654.42**. 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 **June 15, 2012**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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 08, 2012.

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Residential Tenancy Branch