



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD MNDC

### Preliminary Issues

The Landlord noted “*Please add pre-agreed late charge \$25 x 2*” in the monetary order section on the application and they applied for August and September rent as noted in the details of dispute. That being said the Landlord neglected to check off the box to select a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Upon review of the aforementioned, I find the Tenants were advised of the Landlord's intent to request compensation for the late payment fee and loss of rent for September 2012, therefore I amended the application to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, in accordance with section 64 of the *Act*.

### 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, to keep the security deposit as partial satisfaction of their claim, 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.

The Landlord affirmed that the male Tenant, E.J. was personally served with the notice of dispute resolution hearing documents when they were left with his adult son, S.J. on August 14, 2012 in the presence of a witness. She further affirmed that the female Tenant, B.H. was personally served the hearing documents when they were left with her on August 15, 2012, in the presence of a witness.

Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding and I continued in their absence.

Issue(s) to be Decided

1. Have both parties been properly served notice of the Landlord's applications to proceed with a request for possession and a monetary claim?
2. Should the Landlord be issued an Order of Possession?
3. Should the Landlord be issued a Monetary Order?

Background and Evidence

The Landlord affirmed that they entered into a tenancy agreement that began on February 1, 2011 which switched to a month to month tenancy after January 31, 2012. Rent is payable on the first of each month in the amount of \$675.00 and on January 24, 2011, the Tenants paid \$337.50 as the security deposit.

The Landlord confirmed service of the 10 Day Notice, which was posted to the Tenants' door on August 2, 2012 in the presence of a witness. The Notice indicates that \$337.50 remained outstanding for August 1, 2012 rent.

The Landlord stated that on September 1, 2012 they received a payment of \$337.50 from Tenant B.H. and a receipt was issued for use and occupancy only. The accumulated unpaid rent is currently \$675.00 which they are seeking a monetary order for, as well as late payment fees of \$25.00 for August and September 2012.

Analysis

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents when a Landlord is seeking an Order of Possession and a Monetary Order.

The Landlord has applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the female Tenant B.H. who has been properly served with Notice of this Proceeding. The second Tenant, E.J., has not been properly served the Application for Dispute Resolution as required for a monetary claim therefore the claim against the male Tenant E.J. is dismissed without leave to reapply.

Section 89(2) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents when a

Landlord is seeking only an Order of Possession and allows for service by leaving a copy of the hearing documents at the tenant's residence with an adult who apparently resides with the tenant.

Based on the foregoing, I accept that both Tenants were sufficiently served notice of the Landlord's application for an Order of Possession.

**Order of Possession** Upon consideration of the aforementioned 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*. The Tenants failed to pay the rent within 5 days after receiving this notice and therefore the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **August 15, 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.

**Unpaid Rent** The Landlord claims for unpaid rent of \$337.50 for August 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 Landlord has met the burden of proof and I award them a monetary claim of **\$337.50** for August 2012 unpaid rent.

**Loss of rent** – As noted above this tenancy ended August 15, 2012, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for September 2012 given that the Tenant has failed to pay the full September 2012 rent and is still occupying the unit. The Landlord received \$337.50 for use and occupancy only for September 2012 and the Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for September 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$337.50** for loss of September 2012 rent.

**Late Payment Fees.** The Landlord is seeking \$50.00 for late payment fees, consisting of \$25.00 for August and September 2012, in accordance with section 12 of the tenancy agreement. This tenancy ended August 15, 2012, therefore the Landlord may not make a claim for late payment fees for September 2012 as this tenancy was no longer in

effect at that time. Therefore I award the Landlord **\$25.00** late fees for August 2012 and I dismiss the Landlord's claim of \$25.00 for September 2012 late fees.

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:

Unpaid rent for August 2012	\$ 337.50
Loss of rent for September 2012	337.50
August 2012 late fee	25.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$ 750.00
<b>LESS:</b> Security Deposit \$337.50 + Interest 0.00	<u>-337.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 412.50</u></b>

#### 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.

The Landlord has been awarded a Monetary Order against Tenant B.H. in the amount of **\$412.50**. This Order is legally binding and must be served upon the Tenant.

The Monetary claim against Tenant E.J. is DISMISSED, 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: September 17, 2012.

---

Residential Tenancy Branch