



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the conference call hearing, provided evidentiary material in advance of the hearing, and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on August 28, 2012, neither of the tenants attended. The landlord provided evidence of having served each of the two tenants separately on that date and by that method, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord testified that the tenants moved from the rental unit on September 1, 2012 and therefore the application for an Order of Possession is withdrawn.

### Issue(s) to be Decided

The issue remaining to be decided is whether or not the landlord has established a claim against the tenants for unpaid rent or utilities.

### Background and Evidence

The landlord testified that this fixed term tenancy began on July 7, 2012 and was to expire on July 7, 2013. Rent in the amount of \$1,175.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and the landlord had pro-rated the amount of rent for the first month of the tenancy to \$906.60.

On July 27, 2012 the landlord collected a security deposit from the tenants in the amount of \$1,027.50 although the parties had agreed in writing that the security deposit amount was \$1,175.00. The landlord did not know that a landlord may only collect half a month's rent.

The landlord testified that the tenants had paid rent in the amount of \$705.24 for July's rent on July 13, 2012 by way of cheque. The tenants had erroneously pro-rated the amount. The same day, the tenants provided a cheque in the amount of \$1,175.00 for the security deposit, but both cheques were returned N.S.F. and copies were provided for this hearing. On July 20, 2012, the tenants paid \$587.50 by way of a government cheque payable to the landlord on behalf of the tenants, as well as \$440.00 in cash, for a total of \$1,027.50 which the landlord testified was for the security deposit. The tenants did not cover the rent for the first month of the tenancy. The tenants further failed to pay any rent for the month of August, 2012.

On August 19, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities accompanied by a letter and provided copies of both for this hearing. The letter explains to the tenants that the notice is being issued due to late payment of rent for 24 days for July in the amount of \$906.60 and rent for August in the amount of \$1,175.00 and \$147.50 for the unpaid portion of the security deposit. The notice is dated August 19, 2012 and states that the tenants failed to pay rent in the amount of \$1,175.00 that was due on August 1, 2012, and includes a statement about unpaid rent for July and the unpaid portion of the security deposit. The notice contains an expected date of vacancy of August 29, 2012 and the tenants vacated the rental unit on September 1, 2012.

The landlord returned \$827.50 to the tenants on September 1, 2012; the parties had agreed in writing on the move-in/out condition inspection report that the landlord could retain \$200.00 for cleaning. The tenants also provided a forwarding address in writing on September 1, 2012. Copies of both documents were provided for this hearing. The tenants' letter requests any forwarding information be sent to them at that address and promises payment to the landlord in the amount of \$2,229.00 in overdue amounts would be paid by September 7, 2012. The letter does not request a return of the security deposit.

The landlord claims unpaid rent in the amount of \$906.60, being the pro-rated amount of rent for July, 2012; \$1,175.00 for August's rent; and \$147.50 for the unpaid portion of the security deposit.

### Analysis

Under the *Residential Tenancy Act*, the tenancy has ended and therefore, the landlord cannot make a claim for the unpaid portion of the security deposit. The security deposit is held in trust by the landlord for return to the tenants at the end of a tenancy.

In the circumstances, I find that the documentation provided by the landlord is consistent in amounts and dates, and I am satisfied that the landlord has established a claim for unpaid rent for the partial month of July, 2012 in the amount of \$906.60. I further find that the tenants failed to pay rent for the month of August, 2012 and the landlord has established a claim in the amount of \$1,175.00.

I further find that the parties had agreed in writing that the landlord would keep \$200.00 of the security deposit for cleaning, and as a result, the landlord returned \$827.50 to the tenants. No further security deposit is held in trust by the landlord.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I order the landlord to keep the security deposit in the amount of \$200.00 for cleaning as agreed by the parties and I grant the landlord a monetary order in the amount of \$2,131.60 for unpaid rent and recovery of the filing fee.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* as against both tenants, jointly and severally, in the amount of \$2,131.60.

This order is final and binding on the parties and may be enforced.

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: October 04, 2012.

---

Residential Tenancy Branch