



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this application.

One of the named landlords attended the conference call hearing however both landlords were represented by an agent due to a language barrier. The agent gave affirmed testimony. The landlords also provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 29, 2012 the tenant did not attend. The landlords' agent testified that the documents were sent on that date and in that manner and provided a tracking number assigned to the registered mail package by Canada Post. The line remained open while the phone system was monitored for 10 minutes and the only participants who attended the hearing were the landlords.

All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Are the landlords entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on August 1, 2012 for a monthly rental of \$500.00. On August 17, 2012 the landlords collected a

security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlords.

The tenant failed to pay any rent for the month of October, 2012 and promised to pay within a few days. The landlords waited about 10 days and still did not receive any money from the tenant, so one of the landlords personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and provided a copy for this hearing. The notice is dated October 10, 2012 and contains an effective date of vacancy of October 20, 2012. The landlord's agent testified that the parties spoke on October 12, 2012 and the tenant advised that all belongings would be removed the following day. The tenant left the rental unit and has not returned. Close friends of the tenant have attended the rental unit, which is a basement suite in the landlord's house and the landlords reside in the upper unit. The landlord's agent spoke to the tenant's friends and they advise that it is out of character for the tenant to disappear without providing information to the friends about the tenant's whereabouts.

The landlord takes the position that the tenant has abandoned the rental unit. Rent for the month of November is now overdue, and the landlords request an Order of Possession, a monetary order for 2 months of unpaid rent and an order permitting the landlords to keep the security deposit in partial satisfaction of the claim.

The landlords have not been served with an application for dispute resolution by the tenant disputing the notice to end tenancy.

### Analysis

I have reviewed the evidentiary material provided by the landlords, and I accept that the tenant has been served with the notice to end tenancy as declared by the landlord's agent. The *Residential Tenancy Act* states that once served, a tenant must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date.

In this case, I find that the tenant was served on October 10, 2012 and the tenant has not disputed the notice and has not paid the rent, and therefore, the landlords are entitled to an Order of Possession.

With respect to the monetary claim, I accept the testimony of the landlords' agent and I find that it is consistent with the evidentiary material, and I find that the landlords have established a claim for unpaid rent for the months of October and November, 2012 in the total amount of \$1,000.00.

Since the landlords have been successful with the claim, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The landlords currently hold a security deposit in the amount of \$250.00, and I find it just in the circumstances to order the landlords to keep the security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlords for the difference in the amount of \$800.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further order the landlords to keep the security deposit in the amount of \$250.00 and I grant the landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

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: November 29, 2012.

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Residential Tenancy Branch