



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, FF, ET

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72; and
- an early end to this tenancy and an Order of Possession pursuant to section 56.

The tenants did not attend this hearing, although I waited until 11:25 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

At the commencement of the hearing, the landlord's agent (the agent) said that the tenants abandoned the rental unit by December 11, 2012. They left their keys to the rental unit inside the rental unit and the landlord has possession of the rental unit. I have accepted the landlord's request to withdraw his applications for an Order of Possession and an early end to this tenancy. These portions of the landlord's application are withdrawn.

The landlord testified that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by handing it to DW (the female tenant), at 5:30 p.m. The landlord entered into written evidence a Notice of Service document signed by him, the female tenant and his witness at this hearing, attesting to the service of the 10 Day Notice to the tenants at that time and date. The landlord's witness also gave sworn oral testimony that he witnessed the landlord hand the 10 Day Notice to the female tenant as maintained by the landlord. I am satisfied that the landlord served the 10 Day Notice to the tenants in accordance with the *Act*.

The landlord's witness gave sworn testimony that he handed the female tenant a copy of the landlord's dispute resolution hearing package, including the Notice of Hearing, at approximately 7:00 p.m. on November 19, 2012. He said that one of his family member's witnessed this service of the hearing package to the female tenant. In accordance with section 89(1) of the *Act*, I am satisfied that the female tenant has been served with the landlord's dispute resolution hearing package. However, as the landlord has not demonstrated that the male tenant was served with a copy of this hearing package, I advised the landlord and his agent that I could not consider the landlord's application for a monetary award against the male tenant.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the female tenant?

#### Background and Evidence

The landlord testified that this periodic tenancy commenced on or about June 1, 2010. Monthly rent throughout this tenancy has been set at \$1,600.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$800.00 security deposit paid on or about June 1, 2010.

The landlord's application for a monetary award of \$15,300.00 included amounts owing from June 2011 until his November 16, 2012 application for a monetary award. At the hearing, the landlord testified that he received a payment of \$1,600.00 from the tenants in November 2012, after he applied for dispute resolution. The landlord has not received any payment from the tenants for December 2012. The agent asked for consideration of the amounts paid and owing since the landlord completed his application for dispute resolution.

#### Analysis

I have given careful consideration to the landlord's undisputed written evidence and sworn testimony regarding the payments due and paid from June 2011 until the present for this tenancy. These included a list of payments made by the tenants over this period and the amounts owing.

By the end of 2011, the landlord maintained that the tenants owed \$4,400.00 in unpaid rent. I allow a monetary award in the landlord's favour in this amount for 2011.

By October 31, 2011, the landlord's records indicated that the tenants were supposed to have paid \$16,000.00 in rent for the first 10 months of October 2012. The landlord's records indicated that the tenants paid \$7,300 by the end of October 2012. However, as the landlord's handwritten spreadsheet was unclear as to payments made for October 2012, I compared the landlord's spreadsheet with the Personal Deposit Account Summary for that month entered into written evidence by the landlord. This Summary showed a \$1,600.00 payment made on October 19, 2012 and circled by the landlord. I find on a balance of probabilities that the correct amount paid by the tenants from January 1, 2012 until October 31, 2012, was \$8,900.00 (i.e., \$7,300.00 + \$1,600.00 = \$8,900.00). Based on these revised figures, I find that the landlord is entitled to a monetary award of \$7,100.00 for the period from January 1, 2012 until October 31, 2012 (\$16,000.00 - \$ 8,900.00 = \$7, 100.00).

Another \$1,600.00 became owing on November 1, 2012. However, the landlord accepted a \$1,600.00 payment in November 2012, thus offsetting the amount owed for November 2012.

I also find that the landlord is entitled to a monetary award of \$1,600.00 for December 2012. Based on the date of the tenants' abandonment of the rental premises and the landlord's ongoing efforts to re-rent the premises to new tenants, I accept that the landlord has taken adequate measures to mitigate the tenant's losses for December 2012, in accordance with section 7(2) of the *Act*.

As the landlord has been successful in this application, I allow him to recover his filing fee for this application and to retain the security deposit for this tenancy plus applicable interest. No interest is payable over this period.

### Conclusion

I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Rent Owing from June 2011 until December 31, 2011	\$4,400.00
Rent Owing from January 2012 until October 31, 2012	7,100.00
Rent Owing for December 2012	1,600.00
Less Security Deposit	-800.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$12,400.00</b>

The landlord is provided with these Orders in the above terms and **TENANT DW** must be served with a copy of these Orders as soon as possible. Should **TENANT DW** fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's applications for an Order of Possession and an early end to tenancy are withdrawn.

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: December 20, 2012

---

Residential Tenancy Branch