



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rents, a monetary order for unpaid rents, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord and his Agent appeared at the outset of the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

At approximately 12 minutes after the hearing began the female Tenant called into the hearing. I introduced myself and the other participants and explained the process of the hearing, and the evidence heard to that point. The Tenant then made submissions which I have included in this decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on January 18, 2013, by posting on the door (the "Notice"). I note the copy of the Notice the Landlord provided in evidence for the hearing was not signed, however, the Landlord testified that the copy of the Notice served on the Tenants was signed.

The Tenant who appeared at the hearing acknowledged that she and the other Tenant received the Notice on January 20, 2013, and that it had been posted to the door.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Notice is for \$2,400.00 in unpaid rents, up to January 1, 2013. The Landlord testified that the Tenants had not paid rent for November or December of 2012, or January and February of 2013. The monthly rent is \$800.00, due on the first day of the month. The Landlord had applied for a monetary order of \$3,200.00 in this Application.

The Tenant acknowledged no rents had been paid for December, January and February, although she disputed the amount due for November. The Tenant stated she gave the Landlord two payments of \$300.00 each in December of 2012, and that she had understood this amount went to pay the November rent. The Tenant stated she had written down the payments that had been made, because the Landlord does not supply receipts. The Tenant stated she did not know she should have provided these notes in evidence for the hearing.

I note that the Tenant acknowledged receipt of the Notice of Hearing, which includes information on the importance of supplying evidence for the hearing.

The Landlord testified that the \$600.00 paid in December went toward October 2012 rents, and that the Tenants had not paid rents for November and December of 2012, and January and February of 2013.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants have not paid all rents due to the Landlord and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which would have been January 30, 2013, in the corrected Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find there is conflicting evidence regarding the rent paid for November of 2012, although the Tenant acknowledged rent was owed for December of 2012 and January and February of 2013. Therefore, based on the evidence of both parties, I find that rent is owed to the Landlord by the Tenants. Nevertheless, due to insufficient evidence on the issue of November rent, I dismiss the claim of the Landlord for November 2012 rent, with leave to reapply.

I find that the Landlord has established a total monetary claim of **\$2,450.00** comprised of rent due for December of 2012, and January and February of 2013, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$400.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,050.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are conclusively presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

The claim for November 2012 rent is dismissed, with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 14, 2013

---

Residential Tenancy Branch

