



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent and utilities for an Order of Possession because the tenants breached an agreement with the landlords; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord withdrew their application for a Monetary Order for damages to the unit, site or property and for an Order of Possession because the tenants breached an agreement with the landlords.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 26, 2013. Mail receipt numbers were provided by the landlords in evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared along with an agent for the landlords. The parties in attendance gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite

being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

#### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession due to unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order to recover unpaid rent or utilities?
- Are the landlords permitted to keep the tenants security deposit?

#### Background and Evidence

The landlords' testify that this tenancy started on July 22, 2012. Rent for this unit is \$1,400.00 per month and is due on the 1<sup>st</sup> day of each month in advance. The tenants paid a security deposit of \$700.00 on July 20, 2012.

The landlords' testify that the tenants owe a prorated rent for July. This works out to be \$466.66 however the landlords testify that they agreed the tenants could pay \$400.00 for rent for July, 2012. The landlord testifies that the tenants failed to pay this rent and the landlord omitted to include this amount on the 10 Day Notice or the application for a Monetary Order for unpaid rent but seek to amend their application to recover this amount from the tenants.

The landlords testify that the tenants owe rent of \$150.00 for September, 2012. A 10 Day Notice was served upon the tenants in October, 2012 which included October's rent and the outstanding rent from September. October's rent was paid but not the \$150.00 outstanding from September.

The landlords testify that the tenants failed to pay rent for January, 2013 of \$1,400.00. The tenants also continued to owe the \$150.00 for September, 2012. A 10 Day Notice

to End Tenancy was served upon the tenants by registered mail and by posting it to the tenants' door. The landlords testify that the registered mail was returned to the landlords by Canada Post. This Notice notified the tenants that they owe rent of \$1,550.00 which was due on January 01, 2013. The tenants had five days to pay the rent or dispute the Notice or the tenant would end on January 20, 2013.

The landlords testify that the 10 Day Notice also states that the tenants owe utilities of \$300.00 however the landlords testify that this was an error as the rent includes utilities. The landlords testify that the tenants failed to pay the outstanding rent within five days and have not moved from the rental unit. The landlords testify that since that time the tenants have also failed to pay Februarys rent of \$1,400.00. The landlords filled their application for Dispute Resolution and the tenants have now also failed to pay rent for March, 2013 of \$1,400.00. The landlords request to amend their application to include unpaid rent for March as the tenants would be aware that rent for March was due on March 01, 2013.

The landlords request a Monetary Order for \$4,750.00 and seek an Order to keep the security deposit of \$700.00 in partial satisfaction of the unpaid rent. The landlords also request an Order of Possession effective as soon as possible and seek to recover their \$50.00 filing fee from the tenants.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlords.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the tenants owe rent for September, 2012 of **\$150.00** and rent for January, February and March, 2013 of **\$4,200.00**. I have no evidence before me that the tenants owe rent for July, 2012 of \$400.00 and as the landlord has not applied for this sum or notified the tenants that it is outstanding by way of a 10 Day Notice to End Tenancy for unpaid rent then I am not prepared to allow the landlords to amend their application to include this amount. I am prepared however to allow the landlords to amend their application to include unpaid rent for March 2013 as the tenants continue to live in the rental unit and would be aware that rent is due on the first day of March, 2013. Consequently, the landlords will receive a monetary award to the sum of **\$4,350.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$700.00** in partial satisfaction of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$4,350.00
Less Security Deposit	(-\$700.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$3,700.00</b>

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,700.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service upon the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 22, 2013

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Residential Tenancy Branch

