



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The named landlord and the tenants called into conference and participated in the hearing.

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order and if so, in what amount?

### Background and Evidence

This tenancy began on in September, 2012. The landlord testified that the tenant was a friend when the tenancy began and there was no security deposit paid and no written tenancy agreement was created. The landlord testified that the rental unit is a house that he owns. He said that he rented it to the tenant for \$500.00 per month plus payment of the utilities, which are in the landlords' names. The landlord testified that he reduced the rent because the tenant was disabled and receiving disability benefits. He testified that it was verbally agreed that the rent would rise to \$600.00 per month in January. The landlord said that the tenant has made sporadic payments throughout the tenancy and until recently did not keep up the utility payments. The landlord testified that there were rental arrears outstanding and rent owing for February.

On February 17, 2013 he served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit. According to the Notice to End Tenancy there was \$900.00 due for rent and \$350.00 on account of utilities. The tenants acknowledged receiving the Notice to End Tenancy on February 18, 2012. They submitted evidence that they obtained a postal money order for \$350.00 on February 28, 2013 and a \$500.00 bank money order on March 3, 2013. The landlords

filed their application for dispute resolution on February 26, 2013. They claimed an order for possession and said that there was \$1,250.00 owing for rent and utilities.

The tenants did not file an application to dispute the Notice to End Tenancy. The landlord testified at the hearing that they have paid utilities arrears and only the current bills are outstanding. The landlord testified that there is still \$650.00 in outstanding rent due. He said his calculation is based on a monthly rental amount of \$600.00 from January onward. The tenants maintained that the agreed rent is \$500.00 and the landlord is not able to raise the rent until the first anniversary of the tenancy in September. The tenants deny that they owe any rent; they say the rent is paid up to date and they claim that they have made cash payments and have not been given receipts by the landlord.

### Analysis

The landlord did not submit a ledger or account statement to show what payments have been made by the tenants during the tenancy and based on the information provided I am unable to determine whether the landlord is owed rental arrears, but the evidence shows that the tenants did not pay rent for February when it was due and they were served a Notice to End Tenancy for unpaid rent. Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenants do neither of these two things, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The tenants did not pay the rent within five days and they did not apply to dispute the Notice to End Tenancy. The landlord has received two money orders from the tenants, well outside the five day period, but he has proceeded with his application for dispute resolution and made it clear to the tenants that he has no intention of reinstating the tenancy.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order* – In the absence of a ledger or account records I find that the landlord has not established that he is entitled to an award for rental arrears or for unpaid utilities. If there are current utility bills they are not yet due because the landlord has to deliver the bills to the tenants before they are obliged to pay them. The landlord claimed an amount for cleaning and repairing the rental property, but the tenancy had not ended when he made the claim and he has not incurred any costs so this claim is premature. The landlord's monetary claim is therefore dismissed. The landlord has leave to make a further monetary claim after the tenants have vacated the rental unit. The landlord has been only partially successful and I make no award with respect to the filing fee for this application.

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 27, 2013

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Residential Tenancy Branch

