



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenants – CNR, CNC, MT, PSF, RR, SS, FF  
For the landlord – OPR, MR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenants applied to cancel a Notice to End Tenancy for unpaid rent and for cause; for more time to cancel a Notice to End Tenancy; for an Order for the landlord to provide services or facilities required by law; for an Order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; for an Order for the tenants to serve documents or evidence in a different way than required by the *Act*; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; 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 money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement;

The hearing went ahead as scheduled however the tenants failed to dial into the conference call during the hearing. Therefore, no hearing took place regarding the tenants' application as the tenants have failed to present the merits of their application and the tenants' application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 15, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

#### Background and Evidence

This month to month tenancy started on March 15, 2012. Rent for this unit is \$820.00 per month and is due on the last day of each month in advance. The tenants paid a security deposit of \$410.00 on March 15, 2012.

The landlord testifies that the tenants failed to pay all the rent due on February 28, 2013 for March, 2013 leaving an unpaid balance of \$320.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 02, 2013. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenants have five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 12, 2013. The tenants did not pay the outstanding rent and although the tenants had disputed the Notice within five days the tenants have not appeared at the hearing today to present the merits of

their application. Since that time the tenants have also failed to pay rent for April, 2013 to the amount of \$820.00. The landlord requests a Monetary Order to recover the unpaid rent of \$1,140.00.

The landlord has applied to retain the tenants' security deposit of \$410.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy, proof of service for the 10 Day Notice and the hearing documents in evidence.

#### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. 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 have failed to pay rent for March and April, 2013 and the landlord is entitled to recover these rent arrears to the sum of **\$1,140.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$410.00** in partial payment of the rent arrears.

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

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

Outstanding rent	\$1,140.00
Less Security Deposit	(-\$410.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$780.00</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 notice is deemed to have been received by the tenants on March 05, 2013 and the effective date of the notice is amended to March 15, 2013 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 amended 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 landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$780.00**. 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 days** after service on 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.

The tenants' application is dismissed in its entirety without leave to reapply.

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: April 05, 2013

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Residential Tenancy Branch

