



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; For an Order of Possession for cause; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 20, 2013. Mail receipt numbers were provided in the landlord's documentary 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 landlord appeared, gave sworn testimony, was 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

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

This fixed term tenancy started on January 16, 2012 and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$850.00 per month and was due on the 1st of each month.

The landlord testifies that the tenants issued rent cheques each month but these cheques were returned by the bank as there were insufficient funds (NSF) available to honour them. The cheques returned were for January, February, March and April, 2013. The tenant repaid some of this rent after the landlord issued other 10 Day Notices to End Tenancy. However the tenants failed to pay rent for March, 2013 of \$850.00 and the landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 05, 2013. This was served in person to the tenants on that day. This Notice informed the tenants that they owed rent of \$850.00 which was due on March 01, 2013. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 15, 2013. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants also failed to pay rent for April, 2013. The total amount of outstanding rent is now \$1,700.00. The landlord has requested to amend the application to include unpaid rent for April as the tenants continued to reside in the unit and did not vacate until April 07, 2013. The landlord testifies that he has started to advertise the unit a week ago but to date it remains vacant.

The landlord seeks to recover late fees of \$25.00 per month for January, February and March to the sum of \$75.00 and NSF fees of \$25.00 per month for January, February, March and April to the sum of \$100.00. The landlord testifies that there is provision for late fees and NSF fees in the addendum to the tenancy agreement. The landlord testifies that this addendum provides for late fees of \$20.00 per day however the landlord states he has since been made aware that the most he can charge is \$25.00 per month.

The landlord has provided a copy of the tenancy agreement and a copy of the 10 Day Notices to End Tenancy along with the NSF cheques 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. I have allowed the landlord to amend this application to include unpaid rent for April, 2013 as the tenants continued to live in the rental unit and would have been aware that rent was due on the first day of April. Furthermore the Residential Tenancy Policy Guidelines refer to the landlord's right to recover rent for the following month after a 10 Day Notice has been issued. This guideline #3 states, in part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Consequently, the landlord will receive a monetary award to the sum of **\$1,700.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for late fees; the tenancy agreement informs the tenant that the landlord will charge the tenant late fees of \$20.00 per day and as the *Act* sets a limit on the amount of late fees that can be charged to \$25.00 per month I have amended the landlords claim to \$20.00 per month for three months. I further find the tenancy agreement addendum informs the tenants that the landlord will charge \$25.00

per month for NSF cheques. I therefore find the landlord is entitled to recover the amount of \$100.00 for four NSF cheques. The landlord is entitled to a monetary award to the sum of **\$160.00** pursuant to s. 67 of the *Act*.

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 for the balance owing as follows:

Outstanding rent	\$1,700.00
Late fees and NSF fees	\$160.00
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$1,910.00</b>

#### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,910.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: April 16, 2013

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Residential Tenancy Branch