



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, NSF fees, and costs for this proceeding. The landlord had served each tenant with the hearing documents; however, only the female tenant appeared at the hearing. The female tenant confirmed that she was representing both named tenants. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the tenant disconnected from the teleconference call voluntarily approximately 11 minutes after the hearing commenced and as I was giving my decision orally. The line remained open as I concluded the hearing with the landlord but the tenant did not reconnect to the hearing.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent, NSF fees, and costs related to filing this Application, as claimed?

### Background and Evidence

The six month fixed term tenancy commenced February 1, 2013 and the tenants paid a \$500.00 security deposit. The tenants are required to pay rent of \$1,500.00 on the 1<sup>st</sup> day of every month.

It was undisputed that the tenant's rent cheque for March 2013 was returned for insufficient funds and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit on March 13, 2013. The Notice indicates

\$1,500.00 in rent was outstanding as of March 1, 2013 and has a stated effective date of March 22, 2013.

It was undisputed that the tenants did not pay the outstanding rent or file to dispute the Notice. Further, it was undisputed that the landlord has a cheque for April 2013 rent in his possession but that there are insufficient funds in the account to cash the cheque.

In filling this Application, the landlord requested compensation for unpaid rent for March and April 2013, plus \$42.00 for the NSF cheque, \$20.50 for registered mail costs and \$50.00 for the filing fee. The landlord had provided evidence that the rent cheque was returned NSF but did not provide evidence to substantiate he was charged \$42.00 by his bank.

The tenant submitted that she was assaulted by the landlord's son 10 days after the 10 Day Notice was posted. The landlord denied the tenant's allegations.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice; the returned cheque and chargeback notice from the bank; and, registered mail receipts.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, unless the tenant has a legal right to withhold rent. The right to withhold rent is limited to very specific circumstances as provided by the Act and I find I was not provided evidence that the tenants had the legal right to withhold rent from the landlord.

If a tenant does not pay the rent owed the landlord is at liberty to issue a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord posted a 10 Day Notice to End Tenancy on the rental unit door on March 13, 2013. As the 10 Day Notice was posted it is deemed to be received three days later unless there is evidence to the contrary. An incorrect effective date does not invalidate a Notice to End Tenancy;

rather, the effective date automatically changes to comply with the Act. In this case, I find that the effective date of the Notice automatically changed to read March 26, 2013 pursuant to sections 46, 53 and 90 of the Act

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on March 26, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for March 2013 and since the tenants continued to occupy the rental unit into April 2013 I also award the landlord loss of rent for the month of April 2013.

In order to recover NSF charges incurred by the landlord, the landlord, as the applicant bearing the burden of proof, must substantiate the amount he is claiming with supporting evidence. I find the landlord did not provide sufficient evidence to substantiate that his bank charged him \$42.00 for the tenant's NSF cheque.

The Residential Tenancy Regulations also provides that a landlord may charge a tenant an administrative fee of up to \$25.00 for NSF cheques; however, such a term must be included in the tenancy agreement. Upon review of the tenancy agreement provided to me I find there is no such term.

In light of the above, I make no award for NSF fees to the landlord.

Other than recovery of the filing fee, the Act does not provide for recovery of other costs incurred to file and participate in a dispute resolution proceeding. Therefore, I award the filing fee to the landlord but I deny the landlord's claim for recovery of registered mail costs.

As the landlord did not seek authorization to retain the security deposit by way of this Application the security deposit remains in trust, to be administered in accordance with the requirements of the Act.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Rent: March and April 2013	\$ 3,000.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 3,050.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been provided a Monetary Order in the amount of \$3,050.00 to serve and enforce as necessary.

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 18, 2013

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Residential Tenancy Branch

