



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Elizabeth Manor  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, 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; 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.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail to the female tenant and by posting it in the mail box to the mail tenant on June 17, 2013 on. Canada Post tracking numbers were provided by the landlord in documentary evidence. The female tenant was deemed to be served the hearing documents on the fifth day after they were mailed and the male tenant was deemed to be served on the third day after the documents were posted in the mail slot 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 an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the tenants security deposit?

### Background and Evidence

The landlord testifies that this tenancy started on October 01, 2012 for a fixed term that is due to end on September 30, 2013. Rent for this unit is \$850.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$425.00 on September 27, 2012.

The landlord testifies that the female tenant had signed a mutual agreement to end the tenancy on May 27, 2013 effective for June 30, 2013. However the tenants failed to pay all the rent for May leave an unpaid balance of \$616.26. The tenants also failed to pay any rent for June of \$850.00. The landlord testifies that a 10 Day Notice was issued to the tenants on June 02, 2013; however, the amount outstanding entered onto this Notice is in error. The landlord testifies that the amount of \$961.26 was entered when in fact the amount should have been \$1,466.26 to incorporate both the unpaid rent for May and June. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of June 15, 2013. The landlord has also provided a copy of the rent ledger showing the outstanding rent.

The landlord testifies that the tenants paid the amount of \$480.00 on June 12, 2013 and this was accepted for use and occupancy only. The amount of unpaid rent for May and June is now \$986.26. The landlord testifies that there is a clause in the tenancy agreement which informs the tenants that a late fee of \$25.00 will be applied in any month in which rent is late. The landlord seeks to recover the sum of \$25.00 for late rent in June.

The landlord seeks an Order to keep the security deposit of \$425.00 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance of rent and the \$50.00 late fee. The landlord has verbally requested to amend their application to include unpaid rent for July, 2013 of \$850.00 as the female tenant continues to reside in the rental unit and has not paid rent for July. The male tenant has moved out but the landlord is not aware when this occurred as the male tenant did not provide written notice to the landlord and therefore the landlord considers the male tenant equally responsible for rent for July.

The landlord requests an Order of Possession effective within two days of service to the tenants.

### Analysis

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.*

The landlord has testified that the male tenant has moved from the rental unit on an unknown date. However as this is a fixed term tenancy both tenants remain responsible for the rent and as no Notice was given to the landlord, that the male tenant was vacating the unit, then any Orders issued to the landlord will remain in both tenants names.

Consequently I am satisfied with the undisputed evidence before me that the tenants have failed to pay rent for May, June and July 2013. I will allow the landlord to amend the application to include unpaid rent for July as at least one of the tenants continue to have possession of the rental unit and would be aware that rent was due on the first day of July. Therefore the landlord is entitled to recover rent arrears to the sum of **\$1,836.26**. I further find the landlord is entitled to recover late fees for June as requested of **\$25.00** as the tenants were aware of that late fees would be applied if rent was paid late in any month when they signed the tenancy agreement.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$425.00** 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 of the *Act* for the balance owing as follows:

Outstanding rent	\$1,836.26
Late fee for June	\$25.00
Less Security Deposit	(-\$425.00)

Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$1,486.26</b>

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenants on June 05, 2013. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay all 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 section 55 of the *Act*.

#### 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 **\$1,486.26**. 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 landlords 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.

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: July 15, 2013

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Residential Tenancy Branch