



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an order of possession based on unpaid rent and utilities and because the tenants had breached an agreement with the landlord. The landlord also applied for a monetary order for unpaid rent and to recover the filing fee for the cost of the application from the tenants.

The landlord served each tenant with a copy of the application and Notice of Hearing documents by registered mail and provided the Canada Post tracking numbers as evidence for the hearing. One of the tenants appeared for the hearing but was late. At this point the tenant was apprised of the testimony provided by the landlord and the hearing continued. Based on this, I find the tenants were served as per the *Residential Tenancy Act*.

The landlord attended the hearing to give affirmed testimony and was also permitted, under Section 11.5 of the Rules of Procedure, to provide a copy of the most recent notice to end tenancy, the proof that it was served and a copy of the payment receipts issued to the tenants.

During the hearing the landlord stated that the tenants had paid all of the rent arrears he was seeking to claim from the tenants and was only now seeking an order of possession based on the tenant paying rent late. As a result, I dismiss the monetary portion of the landlord's claim and the landlord's claim associated with the breach of an agreement with the landlord.

All of the affirmed testimony and evidence provided prior and after the hearing was carefully considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent for July and August, 2013?

Background and Evidence

The landlord testified that the tenancy began on May 1, 2013 on a month-to-month basis. A written tenancy agreement, provided as evidence for the hearing, was completed and signed by the landlord and tenants named in this application. The landlord collected a security deposit in the amount of \$800.00 from the tenants on May 12, 2013. Rent in the amount of \$1,600.00 is payable on the first day of every month.

The landlord testified that the tenants were habitually late paying rent. On June 1, 2013 the tenant failed to pay rent. As a result, the landlord personally served the tenants with a 10 Day Notice for Unpaid Rent or Utilities on June 6, 2013. The landlord testified that the tenant then paid the outstanding rent on June 12, 2013 in the form of a money order. However, the landlord did not issue a receipt or communicate to the tenants that the rent money was being accepted for use and occupancy only and that the tenancy was not being reinstated by paying the rent late.

However, on July 1, 2013 the tenant again failed to pay rent. As a result, the landlord served the tenant with a 10 Day Notice for Unpaid Rent or Utilities on July 2, 2013 by registered mail. A copy was provided for the hearing along with the Canada Post tracking receipt; the notice shows the expected date of vacancy of July 10, 2013 due to \$1,600.00 in unpaid rent which was due on July 1, 2013.

The landlord testified that he then made his application for dispute resolution on July 4, 2013 based on the first notice to end tenancy issued to the tenants in June, 2013 but testified that he also wanted to include the notice to end tenancy which he served to the tenants in July, 2013.

The tenants then also failed to make the rent payment for August, 2013. However, on August 3, 2013 the tenants paid the outstanding \$3,200.00 for the month of July and August, 2013, but this time, the landlord issued them with a receipt that stated the payment was being accepted for use and occupancy only; this was provided as evidence for the hearing.

The tenant testified that the details surrounding the payments of rent provided by the landlord were correct. However, the tenant testified that the rent payment, in the form of a money order provided as evidence for the hearing, was given to the landlord on June 11, 2013 and not June 12, 2013. The tenant testified that all the rent had been paid but admitted that it had been paid late on the occasions testified by the landlord. The tenant claimed that the landlord had failed to do repairs and not complied with the *Act* in giving proper legal notice of entry.

### Analysis

Section 26 (1) of the *Residential Tenancy Act* states that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. Section 46(4) and (5) of the *Act* also states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice which was served to the tenants by registered mail on July 2, 2013, I find that its content and form complies with the *Act*. Section 90 of the *Act* states that a document served by mail is deemed to be received five days after such mailing. Therefore, the tenants had until July 12, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenants did.

The landlord accepted payment of \$3,200.00 for the outstanding balance of July and August rent on August 3, 2013 but issued the tenant with a receipt that states the money was being accepted for the use and occupancy only. This was provided as evidence for the hearing and as a result, I find that the tenancy has not been re-instated and that the notice to end tenancy served on July 2, 2013 is still valid and in effect.

Since the tenants failed to make payment or dispute the notice as required by the *Act* within the 5 days, I find that the landlord is entitled to an order of possession.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$50.00 filing fee for the cost of the application. As a result, pursuant to Section 72(b) (b) of the *Act*, I authorize the landlord to deduct this from the tenant's security deposit which the landlord still retains.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme 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: August 07, 2013

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Residential Tenancy Branch

