



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding JMG VENTURES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord for an order of possession and a monetary order for unpaid rent or utilities. The landlord also applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fee for the cost of this application from the tenants.

Two of the tenants appeared for the hearing and the landlord appeared with an advocate. The tenants testified that they had not received the hearings papers and had found this information out from the landlord a couple of days before the hearing. However, the landlord provided three Canada Post tracking receipts as evidence of service of the Notice of Hearing and a copy of the application which were dated on July 4, 2013. Section 90 of the *Residential Tenancy Act* states that documents served by mail are deemed to have been received five days after such mailing. Based on this, I find that the tenants were served in accordance with the *Act* on July 9, 2013.

The tenants testified at the start of the hearing that they had personally received the notice to end tenancy for unpaid rent on June 12, 2013. However, at the end of the hearing, the tenants testified that they had not been served with notice to end tenancy on June 12, 2013. However, the landlord provided a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Proof of Service document which shows the signature of one of the tenants as receiving it on June 12, 2013. The tenant denied knowledge of the signature. However, the signature of the tenant on the proof of service document matches that on the signed residential tenancy agreement as well as the addendum. Based on this I find that the tenants were served with the notice to end tenancy for unpaid rent on June 12, 2013.

During the hearing the landlord requested that the deposits paid by the tenants be offset with any monetary claim awarded in satisfaction of the landlords' claim for unpaid rent.

The landlord provided evidence in advance of the hearing. The tenants testified that they had provided late evidence for this hearing; however, this was not before me for the hearing. All of the evidence before me including the affirmed testimony of all the parties has been carefully considered in this Decision.

#### 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 entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

#### Background and Evidence

Both parties agreed that the tenancy started on March 1, 2013 for a fixed term of six months. The landlord collected a security deposit from the tenants in the amount of \$650.00 on March 1, 2013. The landlord also requested a pet damage deposit of \$650.00 which the tenants did not pay. The landlord allowed the tenants to pay the pet damage deposit by April 1, 2013 as they did not have the money before the start of the tenancy to pay it. However, the tenants only paid \$100.00 towards a pet damage deposit on May 23, 2013. As a result the landlord retains a total of \$750.00 in deposits paid by the tenants. Rent in the amount of \$1,300.00 is payable by the tenants on the first day of each month.

The landlord testified that the tenant was habitually late in paying rent throughout the tenancy. On June 1, 2013 the tenants failed to pay rent in the amount of \$1,300.00. As a result, the landlord served the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent on June 12, 2013 with an expected date of vacancy of June 22, 2013. The notice to end tenancy was provided as evidence for the hearing.

The landlord testified that tenant then further failed to pay July, 2013 rent in the amount of \$1,300.00. However, the tenant then made a partial payment on July 2, 2013 in the amount of \$900.00 and then another \$300.00 on July 5, 2013. The landlord issued the tenant a receipt for use and occupancy for both payments and informed the tenant that they were still to leave as per the notice to end tenancy. The landlord testified that the tenants then failed to pay rent on August 1, 2013 and as a result, seeks an order of possession and a monetary order in the amount of \$2,700.00.

The tenants testified that they were in rent arrears in the amount testified by the landlord and that job losses had caused them to go behind on the rent. The tenants testified that they had worked out a payment plan with the landlord for the unpaid rent but were unable to provide a copy before me at the time of this hearing.

### Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* 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 to end tenancy and they must vacate the rental unit on the date to which the notice relates.

As a result, I find that the tenants were personally served by the landlord with the notice to end tenancy on June 12, 2013. Therefore, I find that the tenants had until June 17, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenants did. As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on June 22, 2013 and therefore, the landlord is entitled to an order of possession.

In relation to the landlord's monetary claim, I award the landlord the outstanding amount of rent for June and July and rent for the month of August, 2013 which the tenants have not paid and are still occupying the rental suite, for a total award of \$2,700.00.

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 this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenants to the landlord is \$2,750.00. As the landlord already holds a \$750.00 deposit and made a request for this to be offset with a monetary award for unpaid rent, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$2,000.00.

### Conclusion

For the reasons set out above, I grant the landlord an order of possession 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.

I also grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,000.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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: August 02, 2013

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Residential Tenancy Branch

