



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR

### Introduction

This is an application for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and a request for a Monetary Order for \$1705.00.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order?

### Background and Evidence

The applicant testified that:

- This tenancy began on October 1, 2012 with a monthly rent of \$550.00.
- The tenants fell behind on the rent and therefore on July 8, 2013 the tenants were served with a 10 day Notice to End Tenancy for nonpayment of rent.
- The tenants did not dispute the notice, failed to comply with the notice, and failed to pay the full outstanding rent, and therefore she is requesting an Order of Possession, and a Monetary Order as follows:

March 2013 rent outstanding	\$85.00
April 2013 rent outstanding	\$550.00
May 2013 rent outstanding	\$550.00
June 2013 rent outstanding	\$550.00
July 2013 rent outstanding	\$550.00
August 2013 rent outstanding	\$550.00
September 2013 rent outstanding	\$550.00
October 2013 rent outstanding	\$550.00
Total	\$3935.00

- The tenants did subsequently deposit \$550.00 into her account on July 27, 2013, however she has accepted that for use and occupancy only, and therefore the above amount should be reduced by \$550.00.

The respondent testified that:

- They agree that rent is \$550.00 per month but they do not believe they owe any rent at this time.
- They have supplied receipts and deposit slips that show they have paid the following amounts:

October 1, 2013	\$550.00
November 1, 2013	\$550.00
November 6, 2013	\$1650.00
December 1, 2013	\$550.00
February 21, 2013	\$600.00
May 10, 2013	\$200.00
April 2, 2013	\$400.00
July 27, 2013	\$550.00
Total	\$5050.00

- The landlord also agreed to rent a boat from them in exchange for two months rent, and therefore there is a further \$1100.00 it should be credited to their account.
- The landlord also sent a letter to the Ministry stating that she would not accept any further rent and therefore they believe they should not have to pay any further rent. As a result of the letter the Ministry refuses to pay them any further rent, and therefore they have no rent to pay the landlord.
- They therefore asked that the landlord's application be dismissed.

In response to the tenant's testimony the landlord testified that:

- She never agreed to rent the tenants boat in lieu of rent. The tenants requested that she hold the boat as collateral until they could afford to pay the rent and therefore that is what she did.
- The boat was held by her, and her slip of the Marina but was never used.
- The boat was subsequently returned to the tenants.
- She also never told the Ministry that she would not accept any further rent, she simply inform the Ministry that the tenants were being evicted. She still expected the rent to be paid if the tenants did not vacate.

### Analysis

The parties agree that the rent for this unit is \$550.00 per month, and therefore since this tenancy began on October 1, 2012, and it is now October 1, 2013 the tenants should have paid a total rent of  $13 \times \$550.00 = \$7,150.00$ .

The tenants have supplied receipts and deposit slips that show a total of \$5,050.00 has been paid to the landlord, leaving a total of \$2100.00 not accounted for by receipts.

Therefore there is still a total rent outstanding as follows:

July 2013	\$450.00
August 2013	\$550.00
September 2013	\$550.00
October 2013	\$550.00
Total	\$2100.00

The tenants claim that the landlord agreed to credit them two months' rent for use of a powerboat; however it's my finding that the tenants have not met the burden of proving that claim. The tenants have provided e-mails that show that they had agreed that the landlord could take their boat, however the landlord has argued that she was simply holding the boat for collateral until the tenants paid that outstanding rent and that in fact the boat was eventually returned to them.

It's my finding that it's more likely that the landlord was holding the boat as collateral, and not renting the boat from the tenants as claimed by the tenants, and therefore I will not credit the tenants two months' rent for the alleged rental of the boat.

The tenants also claim that landlord refused to accept any further rent; however is my finding that the applicants have not met the burden of proving this claim either. They claim that the landlord sent a letter to the Ministry refusing any further rent; however they have not supplied a copy of that letter, and the landlord denies that claim, testifying

that she simply sent a letter to the Ministry informing them that the tenants were being evicted for having failed to pay the rent.

Even if the Ministry is refusing to pay rent to the tenants, that does not excuse the tenants from having to pay rent to the landlord.

Therefore it is my finding that the tenants still owe a total of \$2100.00 in back rent to the landlord and therefore I have issued a Monetary Order in that amount.

I also allow the landlords request for an Order of Possession, as the tenants did not file a dispute of the Notice to End Tenancy that they admit to having received in July 2013, and therefore they are conclusively deemed to have accepted the end of the tenancy.

Further the tenants did not pay the full outstanding rent within the five day timeframe to void the Notice to End Tenancy, and in fact there is still \$450.00 in rent outstanding from the month of July 2013.

### Conclusion

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

I have issued a Monetary Order in the amount of \$2100.00.

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: October 24, 2013

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Residential Tenancy Branch