



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's 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 tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; 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*; the landlord's agent gave sworn testimony that both tenants were served in person on November 18, 2013.

The landlord's agent 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*.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord's agent testifies that this fixed term tenancy started on August 01, 2012 and reverted to a month to month tenancy on August 01, 2013. Rent for this unit was \$1,125.00 and increased to \$1,145.00 on October 01, 2013. Rent is due on the first of each month. The tenants paid a security deposit of \$562.50 on July 06, 2012.

The landlord's agent testifies that the tenants had a credit due on their rent for October which left a balance owed for November of \$932.00. The tenants failed to pay this rent on November 01, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 02, 2013. This was posted in the tenants' mail slot and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 15, 2013. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for December, 2013 of \$1,145.00 and for January, 2014 of \$1,145.00. The total amount of unpaid rent is now \$3,222.00.

The landlord originally sought a late fee on the application however withdrew this claim at the hearing.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I am satisfied that there is outstanding rent for November and December, 2013 and January, 2014. Consequently, it is my decision that the landlord is entitled to recover rent arrears of **\$3,222.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of \$562.50 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.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,222.00
Filing fee	\$50.00
Less security deposit	(-\$562.50)
<b>Total amount due to the landlord</b>	<b>\$2,709.50</b>

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted in the tenants' mail slot it was deemed served three days after posting on November 05, 2013. The tenants did not pay 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. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenants pursuant to s. 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 **\$2,709.50**. 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 landlord 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: January 09, 2014

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Residential Tenancy Branch

