



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR, MNDC, FF

For the tenant – MT, CNR, RR, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application. The landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The tenant applied for more time to file an application to cancel the Notice to End Tenancy; to cancel the 10 day Notice to End Tenancy; for an Order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; other issues; and to recover the filing fee from the landlord for the cost of their application.

One of the tenants and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord served the tenants with a copy of his application and Notice of Hearing by registered mail on November 26, 2013 however the tenant served the landlord by normal mail with his application and Notice of Hearing.

According to section 89 of the *Act*, documents for Dispute Resolution cannot be served by mailing them in the normal Canada Post mail they must be sent either by registered

mail or in person. Consequently, as the tenant has not served the landlord correctly with his application and Notice of Hearing I must dismiss the tenant's application.

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 to recover unpaid rent?

Background and Evidence

The parties agree that this month to month tenancy started July 01, 2013. Rent for this unit is \$1,900.00 per month and is due on the 1st of each month. The landlord has provided a copy of the tenancy agreement in documentary evidence.

The landlord testifies that the tenants failed to pay all the rent due for November, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 07, 2013. This was posted to the tenants' door on November 07, 2013 and was deemed to have been served three days after posting. This Notice states that the tenants owe rent of \$1,900.00 which was due on November 01, 2013. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 17, 2013. The tenants did not pay all the outstanding rent or dispute the Notice within five days. The tenants did make a payment of \$1,425.00 which was accepted by the landlord for use and occupancy only leaving an unpaid balance of \$475.00. Since that time the tenants failed to pay all the rent for December, 2013. The landlord issued another 10 Day Notice to End Tenancy on December 06, 2013 and this was sent to the tenants by registered mail. The tenants did make another payment of \$1,425.00 which was accepted for use and occupancy only. This left an outstanding balance for December of \$475.00. The tenants failed to pay any rent for January, 2014 leaving the total amount of outstanding rent at \$2,850.00. The landlord seeks to amend his application to include unpaid rent for December and January

The landlord requests an Order of Possession to take effect as soon as possible; a Monetary Order to recover the unpaid rent and filing fee of \$50.00.

The tenant agrees that they owe rent of \$2,850.00 for November, December, 2013 and January, 2014

### Analysis

Section 26 of the *Residential Tenancy Act* (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.*

Consequently, I find from the documentary evidence and undisputed testimony of the landlord that the tenants have failed to pay all the rent owed for November and December, 2013 and no rent has been paid for January, 2014. Consequently, the landlord is entitled to recover this rent from the tenants and will receive a Monetary Order to the sum of **\$2,850.00**.

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. The tenants did not pay the outstanding rent within five days nor did they apply to dispute the Notice to End Tenancy, which was deemed served on November 10, 2013, 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, which has been amended to December 21, 2013 pursuant to s. 53 of the *Act*, and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,900.00** comprised of unpaid rent and the filing fee. The order must be served on the tenants 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 upon the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy will end the tenants application seeking more time to file an application to cancel the Notice and to have the 10 Day Notice cancelled is dismissed without leave to reapply. The remainder of the tenant's application to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided is dismissed with leave to reapply.

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 16, 2014

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Residential Tenancy Branch

