



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, 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 landlords use of the property; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; 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 tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 24, 2014. The landlord amended their application and served this again to the tenants by registered mail on April 01, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent, and Legal Council for the landlord appeared; the landlord's agent, 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*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession of the rental unit?

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The landlord's agent testifies that this tenancy started on June 01, 2012. The tenants rent a lower unit and the landlord lives in the upper unit. Rent for the tenant's unit is \$850.00 per month and is due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$425.00 at the start of the tenancy.

The landlord's agent testifies that she is the daughter of the landlord and has power of attorney over the landlord's affairs. A copy of which has been provided in documentary evidence. The landlord's agent testifies that the tenants were served a Two Month Notice to End Tenancy on November 30, 2013 by registered mail. This Notice informed the tenants that the landlord, the landlord's spouse or a close family member of the landlord or the landlords spouse will occupy the rental unit. The Notice had an effective date of January 31, 2014.

The landlord's agent testifies that as the landlord has medical issues including Alzheimer's disease she needs to have her family move into the lower unit to be there to care for the landlord. The landlord's agent testifies that her sister (the landlord's daughter) and her family will be moving into the rental unit.

The landlord's agent testifies that in accordance with the Two Month Notice the tenants were given the month of January as a rent free month in compensation for the Notice. However the tenants failed to vacate the rental unit. The landlord's agent testifies that she was advised that due to the Notice being served by registered mail it was not deemed to have been served until five days later and therefore the effective date of the Notice became February 28, 2014.

The landlord's agent testifies that the tenants paid rent for February, 2014 and this was accepted for use and occupancy only. The tenants paid rent of \$650.00 for March which was also accepted for use and occupancy and did not reinstate the tenancy. The tenants owe rent for March of \$200.00.

The landlord has requested an Order to keep part of the security deposit to offset against the unpaid rent and filing fee of \$50.00.

### Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me.

When tenants are served with a Two Month Notice to End Tenancy the tenants are provided with information on page two of that Notice about how the tenants can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on November 30, 2013. As the Notice was served by registered mail it was deemed to be served five days later on December 05, 2013. The tenants have not disputed the Two Month Notice within the 15 allowable days as indicated on page two of the Notice.

Consequently, as the tenants did not file an application to dispute the Notice the tenants are presumed to have accepted the end of the tenancy pursuant to s. 49 (9) of the *Act*. The Notice indicates an effective date of January 31, 2014 however this date is amended to February 28, 2014, pursuant to s. 53 of the *Act*, as the Notice was not deemed to have been received until December 05, 2013. As the amended effective date of the Notice has since passed the landlord is entitled to an Order of Possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

With regard to the landlord claim for unpaid rent; The tenants received one free month's rent as their compensation for the Two Month Notice in accordance with s.51(1) of the *Act*. The tenants were entitled to remain in the unit for the month of February, 2014 and paid rent for that month. However, I am satisfied that the tenants did not pay all the rent owed for March, 2014 as they continued to reside in the unit. This left an outstanding balance of **\$200.00**. Consequently I find the landlord is entitled to keep that amount from the tenants' security deposit pursuant to s. 38(4)(b) of the *Act*.

I further find that as the landlord has been successful with this claim that the landlord is also entitled to recover the **\$50.00** filing fee from the tenants and may deduct that amount from the security deposit pursuant to s. 38(4)(b) of the *Act*. This leaves a balance of \$175.00 which must be dealt with in accordance to s. 38 of the *Act*.

#### Conclusion

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: April 15, 2014

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Residential Tenancy Branch

