



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords – OPR, MNR, MNSD, FF

For the tenants – CNR, FF

### 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; for an Order to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlords for the cost of this application.

The tenants, the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?
- Are the tenants entitled to have the 10 Day Notice cancelled?

### Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2010. Rent for this unit is \$850.00 per month and is due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$425.00 on February 27, 2010.

The landlord's agent testifies that the original landlord passed away on December 20, 2013. As the rental unit was jointly owed between the landlord and his sister DC then upon the landlord's death the ownership reverted to the landlord's sister and DC became the landlord to the tenants.

The landlord's agent testifies that the tenants owed some rent for 2013. However since DC has taken over as landlord the only rent arrears DC sought to recover was for December 3013, January, 2014 and February, 2014. The tenants were served with a 10 Day Notice to End Tenancy on February 19, 2014 in person. A copy of this Notice has been provided in evidence and notifies the tenants that an outstanding amount of \$1,850.00 is outstanding as of February 01, 2014. The landlord's agent testifies that this is comprised of \$150.00 for December, 2013, \$850.00 for January and \$850.00 for February, 2014. The Notice has an effective date of March 03, 2014.

The landlord's agent testifies that on March 08, 2014 the tenants paid \$1,850.00. The tenants informed the landlord that this was for December, February and March. The landlord's agent accepted this payment for use and occupancy only and wrote on the receipt that the 10 Day Notice still stands. The landlords agent testifies that January's rent of \$850.00 has still not been paid and Rent for April was also not paid. The landlord amends their application to the outstanding rent to date of \$1,700.00.

The landlord seeks an Order of Possession effective as soon as possible. The landlord also seeks an Order to apply the security deposit of \$425.00 to the outstanding rent and to recover the \$50.00 filing fee.

The tenants dispute the landlords claim. The tenants testify that they had a credit on their rent of around \$900.00 as they had been paying \$1,000.00 a month from March to August, 2013 to catch up on some previous arrears. The tenant testifies that the landlord (AM) did not provide receipts for the cash paid and allowed the tenants extra time to pay the rent arrears. The tenant testifies that he had informed the landlord's agent that they were unsure how much they owed in rent. However when they received the 10 Day Notice to End Tenancy they tried to give the landlord the amount shown on the Notice of \$1,850.00 on February 27, 2014 however the landlord did not accept this and it was then paid on March 08, 2014.

The landlord's agent disputes that the tenants had a credit of \$900.00 or any amount from 2013. In fact there were additional rent arrears and the tenants were only paying the \$1,000.00 a month to catch up on the previous rent arrears. However they never got caught up prior to the landlord AM passing away.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the 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.*

The tenants have argued that they had a credit of \$900.00 on their rent from 2013 however in this matter the tenant have the burden of proof that they had a credit in rent and that this credit should be applied to any rent for 2014. The landlord has disputed that there was a credit on the rent. Consequently, in this matter the tenants have the burden of proof to show that a credit existed. When it is one person's word against that of the other then the tenants would be required to provide corroborating evidence of any

rent credit. In the absence of any corroborating evidence from the tenants I find the the burden of proof has not been met.

The tenants testified that they had attempted to pay \$1,850.00 indicated on the 10 Day Notice however this was not paid within the five allowable days and therefore when it was paid on March 08, 2014 it did not render the Notice invalid. As the tenants have testified that they did pay the amount indicated as owed on the Notice I find the landlords testimony more credible that the tenants did owe rent for December, January and February. Consequently I am satisfied from the evidence before me that the tenants owe rent for January and April, 2014 and the landlord is entitled to recover these rent arrears to the sum of **\$1,700.00**.

I Order the landlord to keep the tenants security deposit of \$425.00 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the unpaid rent.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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

Unpaid rent for January and March	\$1,700.00
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$1,325.00

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 Notice is deemed to have been received by the tenant on February 19,

2014. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the landlord is entitled to an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,325.00**. 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 landlords effective **two days** after service on 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.

The tenant's application is dismissed without 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: April 17, 2014

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Residential Tenancy Branch

