



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lu'ma Native BCH Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord society was represented by an agent who gave affirmed testimony, however, despite being served individually with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents by registered mail on March 4, 2014, no one for the tenants attended. The landlord has provided evidence of having served each of the two tenants on that date and in that manner, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to taking any testimony and the only party who joined the call was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 1, 2008 and the tenants still reside in the rental unit. Rent in the amount of \$1,331.00 per month is currently payable in advance on the 1<sup>st</sup> day of each month. On September 25, 2008 the landlord collected a security deposit from the tenants in the amount of \$568.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenants failed to pay rent in full when it was due in December, 2013 as well as January and February, 2014. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 18, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided for this hearing, and it is dated February 18, 2014 and contains an expected date of vacancy of February 28, 2014. The notice also states that the tenants failed to pay rent in the amount of \$3,707.00 that was due on February 1, 2014.

The landlord has also provided a copy of a tenant ledger showing that the tenants were in arrears the amount of \$331.00 after making a payment of \$1,002.00 on November 5, 2013. The tenants made a payment of \$615.00 on January 28, 2014 and of that \$329.00 was applied to rent more than 90 days overdue and \$286.00 was applied to rent that was 61 to 90 days overdue. The ledger shows that as at February 1, 2014 the tenants were in arrears \$1,045.00 for 61 to 90 days overdue rent, \$1,331.00 for 31 to 60 days overdue rent, and \$1,331.00 for current rent, for a total of \$3,707.00.

The landlord's agent further testified that since the issuance of the notice to end tenancy, March and April, 2014 rent has become due and more payments have been made by the tenants. The tenants paid \$3,720.00 on March 11, 2014 and \$1,300.00 on March 27, 2014. The balance currently outstanding is \$1,349.00. The landlord issued receipts for the payments which are clearly marked "For Use and Occupancy Only."

The landlord requests an Order of Possession and a monetary order for the unpaid rent, recovery of the filing fee, and to keep the security deposit in partial satisfaction of the claim.

### Analysis

The *Residential Tenancy Act* states that a tenant who is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities has 5 days from the date served to either pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The *Act* also states that incorrect effective dates contained in a notice to end tenancy are deemed to be changed to the nearest date that complies with the *Act*. In this case, the landlord's agent testified that the notice was served by posting it to the door of the rental unit on February 18, 2014, and I find that it was deemed served 3 days later, or February 21, 2014. The effective date of vacancy must be no less than 10 days after that, which I find is March 3, 2014. The tenants have not disputed the notice, and have not paid the rent in full within that 5 day period, having made no payments until March 11, 2014, and therefore, I find that the conclusive presumption applies and the landlord is entitled to an Order of Possession.

With respect to the monetary order I have reviewed the tenant ledger provided by the landlord and I accept the testimony of the landlord's agent and I am satisfied that the amount of \$1,349.00 in unpaid rent remains outstanding. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I hereby order the landlord to keep the security deposit in the amount of \$568.00 and I grant the landlord a monetary order for the difference in the amount of \$831.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit of \$568.00 and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$831.00.

These orders are final and binding and may be enforced.

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 23, 2014

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Residential Tenancy Branch

