



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing dealt with applications by both the tenants and the landlord. The tenants applied to cancel a notice to end tenancy. The landlord applied for an order of possession and a monetary order for unpaid rent.

Both the landlord and one of the tenants attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?  
If not, is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord gave evidence that the tenancy started January 1, 2014 and was a fixed-term for six months ending June 30, 2014. The tenants are obligated to pay rent of \$930.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$465.00.

The landlord gave evidence she served the tenants with a notice to end tenancy for unpaid rent (the "Notice") by personal service on May 4, 2014. The Notice says the tenants failed to pay rent of \$2,075.00 that was due May 1, 2014. The landlord's evidence is that the tenant did not pay February 2014 rent or May 2014 rent, and paid the April 2014 rent late. The landlord states the tenancy agreement provides for late fees of \$75.00 for any month when the rent is late. The tenancy agreement was not provided in evidence.

The unpaid rent amount specified on the Notice of \$2,075.00 is therefore comprised of \$930.00 (Feb 2014 rent), \$930.00 (May 2014 rent), and late fees of \$75.00 (Feb 2014), \$65.00 (April 2014), and \$75.00 (May 2014). The landlord's evidence is that the tenants have not paid rent for June 2014 and so the amount owing is now \$3,005.00.

The tenant gave evidence that the other tenant moved out and he says the other tenant handled all the finances. He agrees that rent has not been paid for May and June 2014. The tenant said he believes the other tenant paid the rent for February 2014 by cheque, however he does not have a bank statement to confirm this.

The landlord's evidence is that the other tenant always paid the rent by money order, not by cheque, and she did not receive February 2014 rent.

### Analysis

I accept the landlord's evidence that no rent was paid for February 2014 on the basis that the landlord has kept records. The tenant did not have any records of making the payment and did not give evidence that he personally made the February rent payment.

I find the tenant received the Notice on May 4, 2014. I accept the evidence of both parties that the tenant has made no further payments since receiving the Notice. The tenant has not provided any reason for not paying the rent that is permitted under the Act. For that reason, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence that the tenant continues to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend the Application for Dispute Resolution to include a claim for June 2014 rent. However, Residential Tenancy Regulation 7(d) does not permit a landlord to charge a late fee of more than \$25.00 per occurrence. For that reason, I find the provision the landlord asserts is in the tenancy agreement which levies late fees of \$75.00 per occurrence is an illegal term and therefore not enforceable.

Since the landlord has been mostly successful in their application, the landlord is entitled to recover the RTB filing fee of \$50.00. The total amount due the landlord is \$2,840.00 (three months' rent at \$930.00 per month plus \$50.00 RTB filing fee). I order that the landlord retain the security deposit of \$465.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,375.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The tenants' application is dismissed. I grant the landlord an order of possession and a monetary order for \$2,375.00. The landlord is also entitled to retain the security deposit.

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: July 2, 2014

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Residential Tenancy Branch

