



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gateway Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; 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 tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 14, 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 (the landlord) appeared, 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*.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?

- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testified that this fixed term tenancy started on August 01, 2012 and reverted to a month to month tenancy on August 01, 2013. Rent for this unit was \$1,125.00 and increased to \$1,145.00. Rent is due on the first of each month. The tenants paid a security deposit of \$562.50 on July 06, 2012.

The landlord testified that the tenants have failed to pay rent for May, 2014 of \$1,145.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2014. This was posted in the tenants' mail box and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 15, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for June, 2014 of \$1,145.00. The total amount of unpaid rent is now \$2,290.00.

The landlord seeks to recover a late fee of \$25.00 for both May and June, 2014. The landlord testified that there is a clause contained in the tenancy agreement notifying the tenants that a fee will be charged of \$25.00 for every month that rent is late

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I am satisfied that there is outstanding rent for May and June, 2014. Consequently, it is my decision that the landlord is entitled to recover rent arrears of **\$2,290.00**.

The landlord was permitted to provide the page of the tenancy agreement that contained a clause concerning late fees after the hearing had concluded. A landlord may charge a fee for late payment of rent where the tenancy agreement provides for that fee in accordance with s. 7(2) of the Residential Tenancy Regulations. I have reviewed the tenancy agreement provided in evidence by the landlord and find the tenancy agreement does provide for a late fee to be charged of \$25.00; consequently, this section of the landlord's claim for \$50.00 is upheld

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of \$562.50 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

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

Outstanding rent	\$2,290.00
Late fees	\$50.00
Filing fee	\$50.00
Less security deposit	(-\$562.50)
<b>Total amount due to the landlord</b>	<b>\$1,827.50</b>

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. As this Notice was posted in the tenants' mail box it was deemed served three days after posting on May 05, 2014. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy 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. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

#### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,827.50**. The Order must be served on the Respondents 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 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: June 27, 2014

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Residential Tenancy Branch