



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and one of the landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant 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

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on August 01, 2011 for a fixed term of a year. The tenancy has since reverted to a month to month tenancy. Rent for this unit is

\$1,050.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$525.00 on September 16, 2011.

The landlord testified that the tenant was continually late paying rent over the last year. The landlord testified that the tenant failed to pay rent for October and November, 2013. The tenant also failed to pay rent for January and April, 2014. A 10 Day Notice to End Tenancy (the Notice) was served upon the tenant on April 05, 2014 by registered mail. A copy of the Notice has been provided in evidence. The Notice indicates that the tenant owes rent for April of \$1,050.00 and the tenant has five days to pay the rent, or apply for dispute resolution or vacate the rental unit on April 18, 2014. The landlord testified that the other landlord had filled in the Notice and had omitted to include October, November and January's rent arrears.

The landlord testified that the tenant paid rent for April on April 18, 2014 and had made a payment of \$100.00 extra in February and \$450.00 extra in March. The landlord testified that since the Notice was served; the tenant has also failed to pay rent for May and June, 2014. The landlord referred to their documentary evidence in the form of bank statements and deposits. The landlord testified that as two tenants in different units have the same rent; this tenant's deposits are for \$1,050.01 to distinguish that this is her rent payment going into the landlords' bank. The landlord testified that their bank statements show that only one payment for \$1,050.00 was made in cash for each month which came from the other tenant in the other unit.

The landlord testified that to date the tenant owes rent of \$4,700.00. The landlords seek to amend their claim to reflect the unpaid rent for May and June, 2014. The landlords request an Order permitting the landlords to keep the security deposit of \$525.00 to offset against the unpaid rent. The landlords also request an Order to recover the filing fee of \$50.00. The landlords seek an Order of Possession effective as soon as possible and a Monetary Order for the balance of outstanding rent.

The tenant disputes the landlords' claim that rent is owed for October, November and January. The tenant testified that these month's rent payments were paid into the landlords' account. The tenant testified that she is unable to show her bank statements of deposits as her belongings are now all packed ready to move.

The tenant agreed that she owed rent for April and testified that this was paid on April 18, 2014. The tenant agreed that additional payments were also made to the landlord of \$550.00.

The tenant agreed that she has not paid rent for May and June but does intend to pay this as soon as possible. The tenant requested an extension of time to vacate the rental unit until July 01, 2014 as the tenant testified she has a new unit to move into on that date.

### 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 tenant disputes that she owes rent for October, November, 2013 and January, 2014 but agrees that she owes rent for May and June, 2014. When a landlord has testified that there is outstanding rent and a tenant disputes this, the burden of proof falls to the tenant to provide corroborating evidence to prove that the rent was paid for October, November and January. In the absence of any corroborating evidence from the tenant and in light of the evidence the landlord has provided in the form of bank statements, it is my decision, on a balance of probability, that the tenant has rent arrears for October and November, 2013, and for January, May and June, 2014 to an

amount of \$4,700.00. I will allow the landlord to amend the application to include unpaid rent for May and June as the tenant agrees this rent is outstanding and raised no objections to the landlord's amendment of this monetary claim. The landlord is entitled to recover rent arrears to the sum of **\$4,700.00** pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$525.00** 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 pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$4,700.00
Less Security Deposit	(-\$525.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$4,225.00</b>

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on April 10, 2014. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days as it was not paid until April 18, 2014; nor did the tenant apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,225.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order; the Order 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 tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order 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 10, 2014

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Residential Tenancy Branch

