



# 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 dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Landlord's agent, D.M. and the Male Tenant, J.M. appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

I have reviewed all oral and written evidence before me that meet the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord's Agent testified he served both Tenants with the Notice of Hearing and their Application on July 28, 2014 by registered mail. The receipt and tracking number for the registered mail was also provided in evidence. Under the Act documents served this way are deemed served 5 days later. I find the Tenants were duly served.

### Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

The parties agreed that no written Tenancy Agreement existed between the Landlord and the Female Tenant. The parties each gave evidence as to the terms of the oral rental agreement.

1. The Landlord's Agent testified as to the tenancy as follows:
  - a. the original tenancy began between the Landlord and the Female Tenant, "about a year ago";
  - b. the first late payment occurred on September 26, 2013;
  - c. the rooms are approximately 300 square feet and the tenants share a bathroom;
  - d. the rental unit was intended for one tenant;
  - e. the Landlord was not aware the Male Tenant had moved in until after he had done so;
  - f. the rent amount was \$490.00 per month payable on the first of the month; and
  - g. the Female Tenant paid a security deposit of \$245.00 in the summer of 2013.
2. The Male Tenant testified as to the tenancy as follows:
  - a. he moved in some time, "after the summer of 2013";
  - b. the amount of rent, "varied and depended on many different things, including services";
  - c. he paid the Female Tenant his portion of rent and she paid the Landlord;
  - d. the Female Tenant had received numerous eviction notices; and
  - e. the Female Tenant vacated the rental approximately 6 weeks ago although she left some personal belongings. Prior to that date, she was last in the rental unit approximately 10 weeks ago

(All of the above collectively referred to as the "Original Tenancy".)

Both parties testified that on the day before the hearing the Male Tenant paid to the Landlord the \$490.00 in outstanding rent as well as the \$50.00 filing fee and had entered into a new residential tenancy with the Landlord which was set out in a written tenancy agreement (the "New Tenancy"). The New Tenancy agreement was not provided in evidence. The New Tenancy began in accordance with the New Tenancy agreement and it was the intention of the Landlord's Agent and the Male Tenant that the security deposit from the Original Tenancy would "transfer" to the New Tenancy.

The Landlord's Agent confirmed the Landlord was no longer seeking a monetary order and wished to withdraw that application. The Landlord's Agent further confirmed that he sought to end the Original Tenancy between the Landlord and the Female Tenant and accordingly sought an Order for Possession.

Based on the testimony of the Landlord's Agent, I find that the Tenants were served with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities on July 4, 2014 by posting to the rental unit door (the "Notice"). Under the Act documents served this way are deemed served 3 days later. I find the Tenants were duly served as of July 7, 2014.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The effective notice date was indicated as July 15, 2014.

Neither Tenant applied to dispute the notice. Further, while the rent was paid on August 19, 2014, it was not paid in full within the five days provided for on the Notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent, as required by the Notice, and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Female Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. This Order may be served on the Female Tenant by posting on the rental unit door, or any other means provided for in section 88 of the Act.

I note that the Landlord and Male Tenant, having entered into a new written Tenancy Agreement, should perform a condition inspection report in accordance with the Act.

The Male Tenant testified that he had paid some \$1,600.00 towards the Female Tenant's financial obligations. It was not clear whether this amount included her portion of the outstanding rent. In any case, there is no jurisdiction under the Act to make decisions as between these two Tenants.

The Landlord is cautioned to deal with the Female Tenant's belongings and security deposit in accordance with the Act and Regulations. There is also no authority for the Landlord to transfer the Female Tenant's security deposit to the New Tenancy. If the Landlord, his agent, or the Male Tenant have any questions with respect to the security deposit and the Female Tenant's belongings, they may contact the Information Officers at the Residential Tenancy Branch.

### Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the Original Tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession.

As the Landlord withdrew the application for a Monetary Order, there will be no Monetary Order.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 20, 2014

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Residential Tenancy Branch

