



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPR, MNR

### Introduction

This hearing was originally dealt with by way of a Direct Request Proceeding (a non-participatory hearing) in response to the Landlords' Application for Direct Request (the "Application"). The Application was made for an Order of Possession and a Monetary Order for unpaid rent on November 10, 2014.

On November 17, 2014 an Interim Decision was made by me which explained that the Landlord's Application could not be progressed through a non-participatory hearing because the documentary evidence supplied was incomplete and contained discrepancies.

However, it was determined that the required information could be obtained from both parties in a hearing. As a result, the Direct Request proceeding was adjourned to this participatory hearing.

Both parties were sent the Notice of Hearing letters detailing the date and time of this hearing. However, only the Landlord appeared for the hearing and provided affirmed testimony. There was no appearance by the Tenants during the 19 minute duration of the hearing.

### Preliminary Issues

The Landlord confirmed the service of the Notice of Direct Request Proceeding documents to each Tenant by way of registered mail. The Landlord referred to his written evidence submitted with his Application which shows the Canada Post tracking numbers. Section 90(c) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by neglecting or failing to pick up mail or use this as reasons alone to apply for a review of this decision. Therefore, I find that the Landlord served each Tenant in accordance with Section 89(1) (c) of the Act.

The Landlord explained that the Tenants were still residing in the rental suite and although they had made some partial payments towards the outstanding rental arrears, the Tenants had not paid December, 2014 rent either. The Landlord requested to increase his monetary claim for unpaid rent to reflect the outstanding rental arrears at the time of this hearing, as well as a request to keep the Tenants' security deposit and to recover the filing fee for this hearing.

As a result, I granted the Landlord's request and amended the Landlord's application pursuant to Section 64(3) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the Landlord's claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy for his basement suite started on November 1, 2013 for a fixed term of one year after which it continued on a month to month basis. Rent is payable by the Tenants under the tenancy agreement in the amount of \$950.00 on the first day of each month.

The Tenants paid the Landlord a security deposit of \$475.00 on October 29, 2013, which the Landlord still retains.

The Landlord testified that the Tenants failed to pay the complete amount of rent for October, 2014 and failed to pay any rent for November 1, 2014. As a result, the Tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on November 2, 2014.

The Notice was served in the presence of a witness who signed a Proof of Service document verifying this method of service. The Notice, which was provided in written evidence, shows that the Tenants were in rental arrears of \$1,598.14 which was due on November 1, 2014. The Notice shows the effective vacancy date is November 12, 2014.

The Landlord testified that the Tenants did make partial payments of rent and by November 22, 2014 the rental arrears were in the amount of \$748.14. The Landlord testified that the Tenants failed to pay any rent for December, 2014 and therefore, the total amount of rent owing now is \$1,698.14.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.

I accept the Landlord's evidence that the Tenants were served with the Notice, which complied with the Act, on November 2, 2014 by personal service.

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to dispute the Notice. If the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the vacancy date on the Notice.

However, the Tenants did neither. As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants, as the effective vacancy date of the Notice has now passed.

Based on the Landlord's oral and written evidence above, I accept the evidence that the Tenants have failed to pay rent to the Landlord in accordance with the Act and that the current amount owed by the Tenants is **\$1,698.14**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,748.14**.

As the Landlord already holds the Tenants' **\$475.00** security deposit, and no interest is payable on this amount, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of **\$1,273.14**.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,273.14**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

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: December 19, 2014

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Residential Tenancy Branch

