



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords – OPR, OPB, MNR, FF

For the tenants – CNC, CNR

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for an Order of Possession for unpaid rent or utilities; an Order of Possession because the tenants breached an agreement with the landlords; for a Monetary Order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel a One Month Notice to End Tenancy for cause and to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities.

At the outset of the hearing the landlords withdraw their application for an Order of Possession because the tenants breached an agreement with the landlords.

The hearing went ahead as scheduled however the tenants failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenants' application as the tenants have failed to present the merits of their application. Consequently the tenants' application is dismissed without leave to reapply.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, served in person on October 15, 2014. The landlords amended their application and served the amended application on October 20, 2014 in person.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

#### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?

#### Background and Evidence

The landlords testified that this tenancy started on June 01, 2014 for a fixed term which is not due to end until June 01, 2015. Rent for this unit is \$875.00 per month and is due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$425.00 at the start of the tenancy.

The landlords testified that the tenants failed to pay the rent owed for October of \$875.00. A 10 Day Notice to End Tenancy (the Notice) was issued to the tenants on October 02, 2014; however, this was later void as the landlords realized it was on an older form and may not currently be valid. The landlords re-issued a 10 Day Notice on the current form on October 08, 2014. This was served upon the tenants on that day in person. The Notice informs the tenants that they have five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on October 18, 2014.

The landlords testified that the tenants failed to pay the outstanding rent and have also failed to pay rent due for November. The total amount of outstanding rent is now \$1750.00. The landlords seek a Monetary Order to recover the outstanding rent and an Order of Possession effective as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlords. Section 26 of the *Act* states:

**26** *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.*

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 tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenants on October 08, 2014. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. I further find the tenants have failed to pay the rent owed for November, 2014 of \$875.00. Consequently, the landlords claim to recover unpaid rent for October and November, 2014 is upheld and a Monetary Order has been issued to the landlords for the amount of **\$1,750.00** pursuant to s. 67 of the *Act*.

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 that date has since passed I grant the landlords an order of possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

As the landlords have been successful the landlords are also entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two (2) days after service upon the tenants**. This order must be served on the Respondents. If the Respondents fail to comply with this Order the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,800.00** comprised of unpaid rent and filing fee. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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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: November 04, 2014

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Residential Tenancy Branch

