



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – MNR, MNSD, OLC, ERP, RP, RR

For the landlord – OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; 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. The tenants applied for a Monetary Order for the cost of emergency repairs, to recover the security deposit; for an Order for the landlord to comply with the *Act*; for an Order for emergency repairs for health or safety reasons; for an Order for repairs to the unit, site or property; and an Order to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing went ahead as scheduled however the tenants failed to dial into the conference call during the call. Therefore, no hearing took place regarding the tenants' application as the tenants have failed to present the merits of their application.

Service of the hearing documents, by the landlord to the tenants, was done by posting them to the tenants' door. Section 89(1) of the *Act* states that when applying for a Monetary Order, hearing documents must be served either in person or by registered mail to an address at which the tenants reside; however, s. 89(2) of the *Act* allows a landlord to serve tenants by posting documents to the door when the landlord has applied for an Order of Possession. Consequently, I will deal with the landlord's

application for an Order of Possession and the filing fee and the landlord's claim for Monetary Orders is dismissed with leave to reapply.

The landlord appeared, gave sworn testimony, was 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

- Is the landlord entitled to an Order of Possession due to unpaid rent?

#### Background and Evidence

The landlord testified that this tenancy started on October 15, 2012. Rent for this unit is \$750.00 per month and was due on the 15th day of each month. The tenants paid a security deposit of \$375.00 on October 15, 2012.

The landlord testifies that the tenant failed to pay all the rent owed for October 2014 leaving an unpaid balance of \$365.00. The landlord issued a 10 Day Notice to End Tenancy (the Notice) for unpaid rent on November 07, 2014. The Notice was served in person. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 17, 2014. The tenants did not pay the outstanding rent and although the tenants did file an application they did not apply to cancel the Notice and have not appeared at the hearing. The landlord testifies that the tenants have also failed to pay any rent for November and December, 2014. The total amount of unpaid rent is now \$1,865.00.

The landlord has provided a copy of the tenancy agreement and a copy of the 10 Day Notice to End Tenancy in evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

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.*

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. The Notice is deemed to have been received by the tenants on November 07, 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*.

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 landlord an Order of Possession pursuant to s. 55 of the *Act*.

As the landlord has been successful in this matter the landlord is 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 landlord 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 find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I Order that the landlord retain this amount from the security deposit of \$375.00 leaving a balance \$325.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

The landlord is at liberty to reapply for Monetary Orders not heard at this hearing today.

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

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 17, 2014

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Residential Tenancy Branch

