



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

a A matter regarding RIPC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

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

One of the tenants and the agent for the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

The parties agreed that this fixed term tenancy started on May 01, 2014 for a one year term. Rent for this unit is \$870.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$435.00 on April 10, 2014.

The landlord's agent testified that the tenants failed to pay all the rent due on December 01, 2014 leaving an unpaid balance of \$870.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 02, 2014. This was posted under the tenants' door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 15, 2014. The tenants did not pay the outstanding rent or file an application to dispute the Notice within five days of receiving the Notice. The tenants did; however, make a rent payment of \$450.00 on December 23, 2014. The tenants failed to pay rent for January, 2015 on the day it was due but paid \$1,100.00 on January 13, 2015. The total amount of unpaid rent is now \$190.00.

The landlord testified that the tenancy agreement provides for a fee of \$25.00 being charged for late fees for any month in which rent is not paid on the day it is due. The landlord seeks to recover a late fee of \$25.00 for December, 2014 and January, 2015.

The landlord has applied to retain part of the tenants' security deposit of \$435.00 in payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on January 31, 2014.

The tenant has not disputed the landlord's claim to recover unpaid rent or late fees. The tenant testified that they paid rent late because the tenant had started working a part time job and her Social Assistance was reduced because of this. After her part time job ended it took a few days for Social Assistance to sort out the tenant's money. Social Assistance has now said they will pay the rent directly to the landlord if the landlord lets the tenancy continue.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which 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 am satisfied that the tenants did not pay the outstanding rent owed for December within the five allowable days as indicated in the Notice. I further find there remains outstanding rent of \$190.00 for January, 2015. Consequently, it is my decision that the landlord is entitled to recover this amount of **\$190.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$50.00 for late fees for December, 2014 and January, 2015; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement in place with the parties. The tenant agreed that there is a clause concerning the payment of \$25.00 for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$50.00** in late fees for December, 2014 and January, 2015.

As the landlords claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the amount of **\$290.00** from the tenants' security deposit of \$435.00 in satisfaction of the rent arrears, late fees and filing fee. The balance of the security deposit must either be returned to the tenants or dealt with in accordance to s. 38 of the *Act*.

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. As this

Notice was posted under the tenants' door it was deemed served three days after posting on December 05, 2014. The tenants did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 this date has since passed I grant the landlord an Order of Possession effective on January 31, 2015 pursuant to s. 55 of the *Act*.

#### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on January 31, 2015. This Order must be served on the Respondents 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: January 13, 2015

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Residential Tenancy Branch

