



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

This review hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for cause; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application. This decision should be read in conjunction with the previous decision issued on November 28, 2014. The tenant LL had applied for a review consideration of that decision and was granted this review hearing based on LL's application that she was unable to attend the previous hearing.

At the outset of the hearing the landlords advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of Possession. The landlords orally requested an amendment to their application concerning the Monetary Order for unpaid rent.

The landlords testified that LL did not serve the landlords with the Review Consideration Decision or a copy of the Notice for Review Hearing. The landlords determined the date, time and dial in codes for this review hearing by speaking to an Officer at the Residential Tenancy Office.

Service of the original hearing documents was done in accordance with section 89 of the *Act*; by the landlords to the tenant LL on November 05, 2014 in person. The other tenant AR was not duly served and the landlords had withdrawn their application against AR at the original hearing.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

#### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent?

#### Background and Evidence

A copy of the tenancy agreement was provided in evidence, which was signed by the parties on June 22, 2014. Monthly rent is \$850.00, due the first day of each month. The tenants paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$400.00.

The landlord NS testified that the tenants abandoned the rental unit on or about December 27, 2014. The tenants failed to pay rent for November or December, 2014 to the amount of \$1,700.00. The landlord testified that the tenant LL continued to reside at the rental unit after the effective date of the One Month Notice and therefore the landlords requested that their application be amended to include unpaid rent for December also.

NS testified that the landlords seek an Order to offset the security and pet deposit against the unpaid rent and to recover the \$50.00 filing fee.

#### Analysis

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.*

Based on NS's undisputed testimony, I find that the landlords have established a monetary award against LL for a loss of rent for November, 2014, in the amount of **\$850.00**. I further find that as LL continued to reside in the rental unit throughout December, 2014 then LL would have been aware that rent was due for use and occupancy of that unit for the month of December. I therefore uphold the landlords' request to amend their application to include a loss of rent for December, 2014 of **\$850.00**

Pursuant to Section 72(2)(b) of the *Act*, the Landlords may apply the security and pet deposits towards partial satisfaction of the award.

The landlords have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the tenant LL pursuant to s. 72(1) of the *Act*.

I hereby issue the landlords with a Monetary Order against the tenant LL, calculated as follows:

Loss of rent for November and December, 2014	\$1,700.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,750.00
Less security deposit and pet damage deposit	<u>- \$825.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF</b>	<b>925.00</b>

## **Conclusion**

The landlords' application against the tenant AR was withdrawn.

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$925.00**. The Order must be served on the Respondent LL. If the Respondent LL fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

The original Decision and Monetary Order are hereby varied pursuant to s. 82(3) of the *Act*.

The Order of Possession issued on November 28, 2014 is no longer required and is set aside pursuant to s. 82(3) of the *Act*.

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 09, 2015

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Residential Tenancy Branch

