



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; 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 and landlords 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. While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below..

### Issues(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a Monetary Order to recover rent owed?
- Are the landlords entitled to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties disagreed when this tenancy started. The landlord MS testified that the tenancy started on July 01, 2014, the tenant SF testified that the tenancy started on August 15, 2014 on January 23, 2014. The parties do agree that this was a verbal agreement between the parties for a month to month tenancy. Rent for this unit is \$1,500.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$750.00 and a pet deposit of \$200.00 at the start of the tenancy.

MS testified that the tenants failed to pay the rent on December 01, 2014 leaving an unpaid balance of \$1,500.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 06, 2014. This was served in person to the tenants on that date. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 16, 2014. The tenants did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenants have failed to pay rent for January, 2015 of \$1,500.00. The total amount of unpaid rent is now \$3,000.00.

The landlords have applied to retain the tenants' security and pet deposit of \$950.00 in partial payment of the rent arrears. The landlords have also applied for an Order of Possession to take effect as soon as possible.

The tenants do not dispute the landlords' claim that the rent for December and January was unpaid. SF testified that RP had a family emergency which resulted in RP having to fly out of province to visit his grandfather in hospital. The tenants had to use the rent to pay for this flight. SF testified that they did inform the landlords that they would be moving in January due to harassment from a neighbour and that they would pay the rent.

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 there is outstanding rent for December, 2014 of \$1,500.00 and outstanding rent for January, 2015 of \$1,500.00. Consequently, it is my decision that the landlords are entitled to recover these amounts to a total of **\$3,000.00**.

I Order the landlords, pursuant to s. 38(4)(b) of the *Act*, to keep the tenants' security and pet deposit of \$950.00 in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,000.00
Filing fee	\$50.00
Less security and pet deposit	(-\$950.00)
<b>Total amount due to the landlord</b>	<b>\$2,100.00</b>

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

### Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,100.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective two days after service upon the Respondents. This Order must be served on the Respondents, If the Respondents fail to comply with the Order, the Order 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 21, 2015

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Residential Tenancy Branch

