



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

The Landlords' Application for Direct Request (the "Application") was originally dealt with through a non-participatory hearing to consider the Landlord's request for an Order of Possession and a Monetary Order for unpaid rent.

On December 23, 2014 an Interim Decision was made by me and informed the parties that the Landlord's Application could not be progressed through a non-participatory hearing because the documentary evidence supplied by the Landlord was incomplete.

However, it was determined that the required information could be obtained from both parties in a hearing. As a result, the Direct Request Proceeding was adjourned to this participatory hearing.

Both parties appeared for the hearing and provided affirmed testimony. The hearing relied on the Landlord's written submissions which were provided with the Application.

The proceedings was explained and the parties were asked if they understood or had questions on the process. Both parties were given a full opportunity to present evidence, make submissions to me and cross examine each other on the evidence provided.

### Preliminary Issues

The Tenant confirmed receipt of the Notice of Direct Request Proceeding documents for the non-participatory hearing way of registered mail shortly after they were sent by the Landlord on December 11, 2014.

The parties confirmed that the Tenants were still residing in the rental suite and although they had made some partial payments towards the outstanding rental arrears, the Tenants had not paid the outstanding rent. The Landlord requested to increase her

monetary claim for unpaid rent to reflect the outstanding rental arrears at the time of this hearing, as well as a request to keep the Tenants' security deposit and to recover the filing fee for filing the Application.

As a result, I granted the Landlord's request and amended the Landlord's Application accordingly pursuant to Section 64(3) (c) of the Act.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent and utilities?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the Landlord's claim for unpaid rent?

#### Background and Evidence

The parties agreed that this tenancy started on September 1, 2014 for a fixed term of one year. The Tenants paid the Landlord a security deposit of \$350.00 on August 27, 2014, which the Landlord still retains.

The parties confirmed that at the start of the tenancy the rent was established by the written tenancy agreement in the amount of \$700.00 and \$50.00 for cable services.

The tenancy agreement provided by the Landlord in written evidence did not stipulate the day in the month that rent is payable by the Tenants. The Landlord explained that she had a copy of the agreement which stated that it was the first day of each month. However, the Tenant was unsure that a fixed date had been established but agreed that it was due at the start of each month.

The Tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on November 19, 2014 which was attached to their door. The Notice was provided in written evidence.

The Landlord testified that the current amount of rent and utilities payable by the Tenant is **\$2,040.00**; this differed to the amount the Landlord had documented in the Application. However, the Landlord provided a breakdown of this amount and the Tenant confirmed that this was the correct amount of outstanding rent and utilities.

The Tenant testified that he had not paid rent because he had a worker's compensation injury claim that was being progressed and that he was seeking to work out a payment plan with the Landlord in this hearing.

The Landlord explained that the Tenants had previously promised to pay rent but had not made any payments since.

### Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.

I accept both parties evidence that the Tenants were served with the Notice, which complied with the Act, on November 19, 2014 by attaching it to their rental unit door.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, the tenant must pay the overdue rent or make an Application to dispute the Notice. If the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the vacancy date on the Notice.

Based on the foregoing, I find that the Tenants have failed to pay rent and did not dispute the Notice. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the effective vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants.

Based on the Landlord's oral and written evidence above, I accept the evidence that the Tenants have failed to pay rent and utilities to the Landlord in accordance with the Act and that the current amount owed by the Tenants is **2,040.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$2,090.00**.

As the Landlord already holds the Tenants' **\$350.00** security deposit, and no interest is payable on this amount, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of **\$1,740.00**.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,740.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

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 26, 2014

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Residential Tenancy Branch

