



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ZENEX CAPITAL CORP.  
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 a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenants' security deposit and to recover the filing fee for the cost of making the Application.

An agent for the Landlord (the "Landlord") appeared for the hearing with an assistant who did not testify. Two Tenants identified on the front page of this hearing as SD and NL throughout this decision, appeared for the hearing. There was no appearance for the third Tenant, MB. Both Tenants did not testify during the hearing but they were represented by family members who acted as agents on their behalf.

The Landlord and the two Tenants' agents provided affirmed testimony during the hearing.

The Tenants' agents each confirmed receipt of the Landlord's Application, the Notice of Hearing documents and the Landlord's documentary evidence by personal service. The Landlord testified that she had also served a copy of the same documents to MB by personal service.

In the absence of any other evidence to disprove service, I find that the Landlord served the required documents in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

The parties were informed of the instructions for the hearing and no questions were raised about the process. The parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for January and February 2015?

- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on November 1, 2014 on a month to month basis. A written tenancy agreement was completed between the Landlord and the three Tenants and a copy of this was provided into written evidence for this hearing. Rent under the agreement was established in the amount of \$1,700.00 payable by the Tenants on the first day of each month.

The Tenants provided the Landlord with a security deposit in the amount of \$855.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that on January 1, 2015, she was provided with a partial rent amount of \$1,134.00 by two of the Tenants which left an outstanding balance of \$566.00. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 22, 2015.

The Notice was provided into written evidence and shows an expected date of vacancy of February 24, 2015 due to \$566.00 in unpaid rent due on January 1, 2015.

The Landlord testified that the same situation occurred when it came to February 2015 rent. As a result the Landlord now seeks to end the tenancy and recover the rental arrears from the Tenants in the amount of \$1,132.00 as claimed in the Application.

The agents for the two Tenants acknowledged that the Notice had been received by the Tenants on January 22, 2015.

The agents for the two Tenants both submitted that while NL and SD had signed the written tenancy agreement together with MB, NL and SD had paid their portion of January and February 2015 rent and it was MB that had failed to pay her portion which they were not responsible for. NL's agent submitted that NL and SD had agreed to be in a tenancy with MB who was already in a tenancy with the Landlord and that the Landlord had a responsibility to inform them that MB had a history of not paying rent. The Tenants' agents both submitted that NL and SD had been good standing Tenants who had paid rent on time and were now being punished by the Landlord because of MB's failure to pay rent.

### Analysis

The Tenants claim that they were only responsible for paying their portion of their rent and that it was MB that was in rental arrears and not NL and SD.

Policy Guideline 13 to the Act provides for the definition of a co-tenant being, two or more tenants who rent the same property under the same tenancy agreement. The written tenancy agreement provided by the Landlord clearly shows that the tenancy was entered into between the Landlord and the three named Tenants. A landlord is not responsible under the Act for advising and informing co-tenants who they should enter into a tenancy with. Therefore, under the tenancy agreement, I find the Tenants named in the Landlord's Application are all co-tenants in respect to this tenancy.

The policy guideline goes on to say that co-tenants are **jointly and severally liable** for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from **all or any one** of the tenants. The responsibility then falls to the tenants to apportion amongst themselves the amount owing to the landlord. The same principals would apply with respect to the Landlord's obligation in dealing with the Tenants' security deposit at the end of the tenancy.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a 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 date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act.

I accept the Landlord's undisputed evidence that the Notice was served to the Tenants and that the Tenants have failed to pay rent or make an Application to dispute the Notice.

As a result, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. Therefore, the Landlord is entitled to an Order of Possession which is effective on February 24, 2015.

The Landlord is also entitled to recover lost rent in the amount of **\$1,132.00** for January and February 2015 as the parties confirmed that this remains unpaid to the Landlord.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,182.00** (\$1,132.00 + \$50.00).

As the Landlord already holds the Tenants' **\$855.00** security deposit, 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 rent claimed in the amount of **\$327.00** (\$1,182.00 – \$855.00).

Conclusion

The Tenants, being jointly responsible for this tenancy, have breached the Act by failing to pay rent under the tenancy agreement.

As a result, the Landlord is granted an Order of Possession effective on **February 24, 2014 at 1:00 p.m.** This order must be served on the Tenants and may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's claim for unpaid rent.

The Landlord is granted a Monetary Order for the balance of unpaid rent in the amount **\$327.00**, pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

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: February 20, 2015

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Residential Tenancy Branch

