



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and late fees. The tenants did not appear at the hearing. The landlords provided registered mail receipts, including tracking numbers, as proof the tenants were served with the hearing documents by registered mail sent to the rental unit on February 3, 2015. The landlords testified that the tenants continue to occupy the rental unit but have not picked up the registered mail. Section 90 of the Act deems a person to have been served with documents five days after mailing even if the recipient refuses to accept or pick up their mail. Based upon the evidence before me and pursuant to section 90 of the Act, I find the tenants are deemed to have been served with notice of this proceeding. Therefore, I continued to hear from the landlords without the tenants present.

During the hearing the landlords requested their monetary claim be reduced to reflect a payment made by the tenants on February 5, 2015 and to withdraw their request to retain the security deposit and pet damage deposit. The requests for amendment were granted as they are non-prejudicial to the tenants and the landlords understood that the deposits shall remain in trust for the tenants to be administered in accordance with the Act.

### Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid rent and late fees?

### Background and Evidence

The month to month co-tenancy commenced September 1, 2014 and the tenants are required to pay rent of \$2,050.00 on the 1<sup>st</sup> day of every month. The tenancy agreement also provides that the landlords may charge a late fee or administrative charge for returned cheques of \$25.00. The tenants' rent cheque for January 2015 was returned for insufficient funds.

The landlord testified that she contacted the tenants about the returned cheque and the tenant advised the landlord that they would pay the outstanding rent in the evening of January 27, 2015. The landlord attended the property on the evening of January 27, 2015 and the tenants' teenaged son advised the landlord the tenants were not home. The landlord handed the tenants' son an envelope containing a 10 Day Notice to End Tenancy for Unpaid Rent and advised the son that he should give it to the tenants. The landlords subsequently determined that giving a document to a teenager is not sufficient service so the following morning the male landlord attended the property and personally served the female tenant with another 10 Day Notice to End Tenancy for Unpaid Rent (the subject Notice) after she had come out of the house to warm up her vehicle.

The subject 10 Day Notice is dated January 28, 2015 and indicates the tenants failed to pay rent of \$2,050.00 that was due on January 1, 2015. The Notice has a stated effective date of February 7, 2015. The tenants did not file to dispute the Notice but the tenants presented the landlords with \$2,050.00 on February 5, 2015. The landlords applied the payment toward the rent owed for January 2015 and communicated to the tenants by way of a receipt that the money was being accepted for "use and occupancy only" and would not result in cancellation of the 10 Day Notice or this proceeding. The receipt was emailed to the tenants on February 5, 2015 and posted to the door of the rental unit on February 6, 2015. The landlords testified that the tenants continue to reside in the rental unit and did not pay any rent for February 2015.

The landlords requested an Order of Possession effective as soon as possible and a Monetary Order for the following outstanding amounts: rent for February 2015; late fee for January 2015; late fee for February 2015; and, recovery of the filing fee.

Documentary evidence provided for my review included the following: the tenancy agreement; the 10 Day Notice dated January 28, 2015; a ledger showing the rent charges and payments since the tenancy commenced; registered mail receipts; and, the receipt for monies received February 5, 2015.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement until such time their tenancy legally ends even if the landlord has violated the Act, regulations or tenancy agreement unless the tenant had a legal right to withhold rent.

Where a tenant does not pay rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord personally served a valid 10 Day Notice to End Tenancy upon the tenants on January 28, 2015. Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the effective date of February 7, 2015. I am satisfied that the payment of the outstanding rent more than five days later on February 5, 2015 did not reinstate the tenancy or nullify the 10 Day Notice as clearly indicated on the receipt given to the tenants. Therefore, I find the landlords entitled to regain possession of the rental unit and I provide the landlords an Order of Possession effective two (2) days after service upon the tenants.

As the tenancy was still in effect as of February 1, 2015 I find the tenants were obligated to pay rent for February 2015 on February 1, 2015 and I accept the undisputed evidence before me that they failed to do so. Also considering the tenants continued to occupy the rental unit up to the day of this proceeding, I award the landlords unpaid rent of \$2,050.00 for the month of February 2015.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge fees up to \$25.00 for late payment of rent or returned cheques provided such a term is included in the tenancy agreement. Upon review of the tenancy agreement, I find the tenancy agreement contains such a valid term and the landlords are entitled to charge the tenants \$25.00 for late payment of rent for the months of January 2015 and February 2015 as requested. Therefore, I further award the landlords the sum of \$50.00 for late fees for two months.

Since the landlords were successful with this Application I award recovery of the \$50.00 filing fee they paid for this Application.

As the landlords withdrew their request to retain the security deposit and pet damage deposit, the deposits have not offset the amounts awarded to the landlords with this decision and the deposits shall remain in trust for the tenants to be administered in accordance with the Act.

In light of all of the above, the landlords are provided a Monetary Order to serve upon the tenants calculated as follows:

Unpaid Rent: February 2015	\$ 2,050.00
Late fees: January 2015 and February 2015	50.00
Filing fee	<u>50.00</u>
Monetary Order for landlords	\$ 2,150.00

### Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenants.

The landlords have been provided a Monetary Order in the total sum of \$2,115.00 to serve upon the tenants and enforce as necessary.

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 26, 2015

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Residential Tenancy Branch

